Supreme Court, U.S.
FILED
JUL 29 2005
OFFICE OF THE CLERK

Nos. 04-1203 and 04-1236

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

STATE OF GEORGIA, ET AL.

TONY GOODMAN, PETITIONER

v.

STATE OF GEORGIA, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

PAUL D. CLEMENT
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

Counsel of Record
for Petitioner United States of America

DREW S. DAYS, III
Morrison & Foerster LLP
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-1500

Counsel of Record
for Petitioner Goodman

DAVID E. LANGFORD
Assistant Attorney General
Georgia Department of Law
40 Capitol Square
Atlanta, GA 30334-1300
(404) 463-8850

Counsel of Record
for Respondents

PETITIONS FOR WRITS OF CERTIORARI FILED: MAR. 9, 2005
CERTIORARI GRANTED: MAY 16, 2005

TABLE OF CONTENTS

	Page
Court of appeals docket entries	1
District court docket entries	7
Magistrate Judge's report and recommendation (filed Feb. 2000)	17
District court order (filed Mar. 6, 2000)	26
Complaint (filed Jan. 6, 1999)	27
Emergency motion for temporary restraining order (filed May 17, 1999)	55
Plaintiff's motion to amend his emergency motion for temporary restraining order (filed May 24, 1999)	59
Plaintiff's affidavit in support of motion for summary judgment (filed May 24, 1999) [Exh. A]	62
Declaration of Tracy Miller in support of plaintiff's motion for a temporary restraining order (filed May 24, 1999) [Exh. C]	67
Declaration in support of plaintiff's motion for a temporary restraining order (filed June 7, 1999)	70
Answer of defendants State of Georgia and Georgia Department of Corrections (filed Aug. 16, 1999)	72
Plaintiff's statement of undisputed facts in support of motion for summary judgment (filed Oct. 21, 1999)	80
Plaintiff's affidavit in support of motion for summary judgment (filed Oct. 21, 1999) [Exh. E]	87
Administrative review lock-up order (dated June 18, 1996) [Exh. P-1 to Pltf. Mot. for S. J'ment]	90
Letter from Robert F. Proctor, M.D., Staff Physician/Internal Medicine Georgia State Prison to Tony Goodman (dated Sept. 10, 1997) (filed Oct. 21, 1999) [Exh. P-2 to Pltf. Mot. for S. J'ment]	91

Table of Contents—Continued: Page

Letter from Carolyn A. Mailloux, MD, Medical Director of Georgia State Prison to Tony Goodman (dated Sept. 8, 1997) (filed Oct. 21, 1999) [Exh. P-3 to Pltf. Mot. for S. J'ment] 92

Defendant's response to plaintiff's statement of material facts (dated Nov. 18, 1999) 93

Defendant's statement of material facts (filed Nov. 18, 1999) 96

Affidavit of plaintiff Tony Goodman (filed Dec. 2, 1999) [Exh. P-1 to Pltf. Resp. to Def. Mot. for S. J'ment] 98

Medical Clinic Form (filed Dec. 2, 1999) [Exh. P-9 to Pltf. Resp. to Def. Mot. for S. J'ment] 100

Declaration in support of plaintiff's opposition to defendant's motion for summary judgment (filed Dec. 2, 1999) [Exh. P-12] 101

Affidavit of Tony Goodman (filed Feb. 25, 2000) 105

Plaintiff's declaration in support of his opposition to defendant's motion for summary judgment (filed Nov. 1, 2001) [Exh. L-4] 107

NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Appendix to the United States' petition for a writ of certiorari, No. 04-1203, at the following pages:

Opinion of court of appeals for the Eleventh Circuit (filed Sept. 16, 2004) 1a-22a

District court order granting defendant's motion for summary judgment (filed Dec. 20, 2001) 23a-27a

District court judgment dismissing action (filed Dec. 20, 2001) 28a

Table of Contents—Continued: Page

Order of the court of appeals for the Eleventh Circuit denying rehearing and rehearing en banc (filed Dec. 9, 2004) 29a-30a

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 02-10168-GG

TONY GOODMAN, PLAINTIFF-APPELLANT

v.

O.T. RAY, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	PROCEEDINGS
1/16/2002	Probable Jurisdiction Noted: Appellant-Goodman, Tony (Pro Se)
	* * * * *
3/18/2002	Appellant's Motion for Leave to Proceed is GRANTED. Appellant's Motion for Appointment of Counsel is GRANTED. Appellant's Motion for Transcripts at Govt. Expense is DENIED WITHOUT PREJUDICE to such motion being made by Appointed Counsel. (SFB)
	* * * * *
5/31/2002	ENTRY OF DISMISSAL: Pursuant to the provisions of 11th Cir. R. 42, this appeal is hereby dismissed for want of prosecution because the appellant has failed to file the record excerpts

DATE	PROCEEDINGS
	within the time fixed by the rules, effective this date.
	* * * * *
5/28/2002	Appellant's Brief Filed: Appellant-Goodman, Tony A. (Atty: Lawrence J. Bracken, II)
	* * * * *
6/11/2002	Motion to Reinstate Appeal: Appellant-Goodman, Tony A. (Atty: Lawrence J. Bracken, II)
	* * * * *
7/1/2002	Appellant's motion to reinstate this is appeal is GRANTED. GBT/SFB/j
	* * * * *
7/1/2002	Record Excerpts
8/01/2002	Appellees Brief Filed: Appellees-State of Georgia (Atty: David E. Langford)
	* * * * *
9/11/2002	Reply Brief Filed: Appellant-Goodman, Tony A. (Atty: Lawrence J. Bracken, II)
	* * * * *
11/13/2002	Oral Argument Scheduled: 11/13/02

DATE	PROCEEDINGS
11/15/2002	W. Christopher Arbery argued for Appellant, David E. Langford argued for Appellee
	* * * * *
5/14/2003	Amicus Curiae Brief: (Atty: Sarah E. Harrington)
	* * * * *
6/27/2003	The motion of Appellees to file a reply brief to Appellant's response brief, is GRANTED. (EEC)
	* * * * *
6/27/2003	Reply Brief to Appellant's Response Brief to Amici Curiae: (Atty: David E .Langford)
	* * * * *
7/03/2003	Letter issued to the parties in this appeal and in 02-10360 advising that the Court will withhold decision in these two cases until the USSC issues its decision in Lane (SC #02-1667)
	* * * * *
6/07/2004	The motion for supplemental briefing, filed by amicus curiae USA, is GRANTED. The parties and the United States are directed to file supplemental briefs of no more than thirty

DATE	PROCEEDINGS
	(30) pages. . . . by June 25, 2004. (see file for complete text) EEC
	* * * * *
6/25/2004	Supplemental Appellate Brief: (Atty: Lawrence J. Bracken, II)
6/28/2004	E-Brief Tendered: Intervenor by Sarah E. Harrington for United States of America
6/28/2004	Supplemental Appellee Brief:m 6/30 pt'd color (Atty: David E. Langford)
6/28/2004	Supplemental Amicus Brief: (Atty: Sarah E. Harrington)
7/01/2004	Notice of Intervention filed by United States
	* * * * *
7/9/2004	Appeal, No. 02-13348, scheduled for oral argument on July 20, 2004, raises issues similar, if not identical . . . this appeal is hereby TRANSFERRED and this Court ORDERS that this appeal be scheduled for re-argument on 7/20/04 . . . EEC/JCH/FARRIS/SEE TEXT
	* * * * *
7/20/2004	Oral Argument Scheduled: 07/20/04

DATE	PROCEEDINGS
7/23/200[illegible]	Sarah E. Harrington argued for Intervenor; W. Christopher Arbery argued for Appellant; David E. Langford argued for Appellee
	* * * * *
9/16/2004	Judgment Entered
9/16/2004	OPIN1 (Notice of issuance of opinion) issued. c: Arbery, W. Christopher; c: Bracken, Lawrence J., II; c: Charouhis, William Nicholas; c; Colombo, Sherril M.; c: Graham, James E.; c: Harrington, Sarah E.; c:Langford, David E.
9/16/2004	Opinion Issued - VACATED, REVERSED, and REMANDED, in part; AFFIRMED, in part.
	* * * * *
10/15/2004	Mandate Issued
	* * * * *
10/19/2004	Mandate Recalled
11/1/2004	Petition for Rehearing En Banc: (Atty: Sarah E. Harrington)

DATE	PROCEEDINGS
12/09/2004	The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, the Petition(s) for Rehearing En Banc are DENIED.
12/20/2004	CASE CLOSED-Mandate Issued
	* * * * *
3/14/2005	Notice of Filing Certiorari: sc# 04-1203
	* * * * *
5/23/2005	Certiorari Granted: sc# 04-1203
5/23/2005	Certiorari Granted: sc# 04-1236
5/23/2005	SC consolidated 04-1203 & 04-1236. Oral argument not yet scheduled.

UNITED STATES DISTRICT COURT
DISTRICT OF GEORGIA (STATESBORO)

Civil Docket No. 6:99-cv-00012-JEG

TONY GOODMAN, PLAINTIFF

v.

O.T. RAY, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
01/06/1999	1	ORDER granting leave to Proceed in Forma Pauperis, subject to PLRA; pla required to furnish Prisoner Trust Acct Stmt and Consent to Collection of Fees w/in 30 days, setting Notice of Compliance deadline to 02/12/99. (signed by Magistrate Judge James E. Graham); copies served. (ddc) (Entered: 01/06/1999)
01/06/1999	2	COMPLAINT (Filed Nunc Pro Time 01/04/99) (ddc) (Entered: 01/06/1999)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
05/17/1999	5	MOTION by Tony Goodman for Temporary Restraining Order and/or for Preliminary Injunction with brief in support. (ddc) (Entered: 05/17/1999)
		* * * * *
06/07/1999	8	MOTION by Tony Goodman for Temporary Restraining Order, for Protective Order with brief in support. (dks) (Entered: 06/11/1999)
		* * * * *
06/15/1999	11	REPORT AND RECOMMENDATIONS of Magistrate Judge James E. Graham recommending pla's claims ag/defs Ray, Garner, Thomas, Sikes, Brady, Patterson, Whimbly and King be dismissed; pla's civil rights claims ag/Georgia Dept of Corrections should also be dismissed. Objections to R and R due by 7/6/99 (ddc) (Entered: 06/15/1999)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
6/15/1999	13	REPORT AND RECOMMENDATIONS for Magistrate Judge James E. Graham Re: [8-1] motion for Temporary Restraining Order, [8-2] motion for Protective Order recommending motion be denied; Motion no longer referred; copies served. Objections to R and R due by 7/6/99 (ddc) (Entered: 06/15/1999)
		* * * * *
08/16/1999	19	ANSWER to Complaint by State of Georgia and GA Dept of Corr (Attorney Stephen E. Curry),; jury demand (ssl) Modified on 07/13/2001 (Entered: 08/17/1999)
08/20/1999	20	ORDER adopting [11-1] report and recommendations, dismissing pla claims against dft's Ray, Garner, Thomas, Sikes, Brady, Patterson, Whimbly, King and Ga. Dept. of Corrections, the only remaining claims is pla allegations of violations of the Americans With Disabilities Act. (signed by Judge B. Avant

DATE	DOCKET NUMBER	PROCEEDINGS
		Edenfield); [EOD Date 8/20/99 copies served. (jgb) (Entered: 08/20/1999)
08/20/1999	21	JUDGMENT adopting R/R and dismissing pla claims against Ray, Garner, Thomas, Sikes, Brady, Patterson, Whimby, King and Ga Dept of Corrections; [EOD Date 8/20/99 copies served. PLRA Notice mailed. (jgb) (Entered: 08/20/1999)
08/20/1999	22	ORDER denying [8-1] motion for Temporary Restraining Order, [8-2] motion for Preliminary Injunction, denying [6-1] motion to Amend [5-1] motion for Temporary Restraining Order by Tony Goodman, denying [5-2] motion for Preliminary Injunction by Tony Goodman, denying [5-1] for Temporary Restraining Order (signed by Judge B. Avant Edenfield); [EOD Date 8/20/99 copies served. ss/ Modified on 09/29/1999 (Entered: 08/20/1999)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/21/1999	25	MOTION by Tony Goodman for Summary Judgment with brief in support. (slt) (Entered: 10/21/1999)
		* * * * *
11/18/1999	32	STATEMENT OF MATERIAL FACTS by defendant O.T. Ray, defendant J. Wayne Garner, defendant A. G. Thomas, defendant Johnny Sikes, defendant J. Brady, defendant Margaret Patterson in support of [28-1] motion for Summary Judgment by State of Georgia (dks) (Entered: 11/23/1999)
12/02/1999	33	RESPONSE by Tony Goodman [28-1] motion for Summary Judgment by State of Georgia (slt) (Entered: 12/02/1999)
		* * * * *
02/10/2000	37	REPORT AND RECOMMENDATIONS of Magistrate Judge James E. Graham Re: [28-1] motion for Summary Judgment, [25-1] motion for Summary Judgment recommending that both motions be denied; copies served. Objections to R and R

DATE	DOCKET NUMBER	PROCEEDINGS
		due by 2/28/00 (ddc) (Entered: 02/10/2000)
		* * * * *
02/14/2000	39	MOTION by Tony Goodman to require Georgia State Prison to comply with Americans with Disabilities Act with brief in support. (Titled "Motion for Assistance and Change of Address of Plaintiff.") (slt) (Entered: 02/14/2000)
		* * * * *
02/25/2000	41	MOTION by Tony Goodman for emergency injunctive relif with brief in support. (slt) (Entered: 02/25/2000)
		* * * * *
02/25/2000	42	AFFIDAVIT by Tony Goodman Re: [41-1] motion for emergency injunctive relief by Tony Goodman (slt) (Entered: 02/25/2000)
03/06/2000	43	ORDER denying [28-1] motion for Summary Judgment, denying [25-1] motion for Summary Judgment (signed by Judge B. Avant Edenfield); [EOD Date 3/6/00 copies served. (ssl) (Entered: 03/06/2000)

DATE	DOCKET NUMBER	PROCEEDINGS
03/14/2000	44	ORDER denying [41-1] motion for emergency injunctive relief, denying [39-1] motion to require Georgia State Prison to comply with Americans with Disabilities Act (signed by Judge B. Avant Edenfield); [EOD Date 3/14/00 copies served. (ssl) (Entered: 03/14/2000)
		* * * * *
04/06/2000	46	DEMAND for jury trial by Tony Goodman (dks) (Entered: 04/07/2000)
		* * * * *
6/14/2001	62	ORDER granting consent to trial by Magistrate (signed by Judge B. Avant Edenfield); [EOD Date 6/14/01] copies served. (bcw) (Entered: 6/14/2001)
		* * * * *
10/22/2001	88	MOTION by State of Georgia for Summary Judgment with brief in support. (wwl) (Entered: 10/22/2001)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/22/2001	90	MEMORANDUM by State of Georgia in support of [88-1] motion for Summary Judgment by State of Georgia (wwl) (Entered: 10/22/2001)
11/01/2001	91	RESPONSE by Tony Goodman to [88-1] motion for Summary Judgment by State of Georgia (slt) (Entered: 11/01/2001)
		* * * * *
12/20/2001	94	ORDER granting [88-1] motion for Summary Judgment. Plaintiff's claim for injunctive relief has been rendered moot by his transfer from Georgia State Prison (signed by Magistrate Judge James E. Graham); [EOD Date 12/20/01] copies served. (nys) (Entered: 12/20/2001)
12/20/2001	95	JUDGMENT entered DISMISSING this action in accordance with the Court's Order of 12/20/01 granting Defendant's motion for summary judgment; [EOD Date 12/20/01] copies served. PLRA Notice mailed. (nys) (Entered: 12/20/2001)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
01/07/2002	96	NOTICE OF APPEAL by Tony Goodman; copies served. [95-1] judgment order, [94-1] order (jsr) (Entered: 01/07/2002)
		* * * * *
01/09/2002		USCA Case Number Re: [96-1] appeal by Tony Goodman USCA NUMBER: 02-10168G (kts) (Entered: 01/15/2002)
		* * * * *
10/18/2004	114	JUDGMENT OF USCA VACATING, REVERSING, and REMANDING, in part AFFIRMED, in part (certified copy) Re: [96-1] appeal by Tony Goodman (USCA recalled the mandate and directed the Clerk of district court to return the opinion and judgment issued as mandate due to a clerical error.) (nys) Modified on 10/25/2004 (Entered: 10/19/2004)
		* * * * *
12/22/2004	118	JUDGMENT OF USCA (certified copy) Re: [96-1] appeal by Tony Goodman Vacated, Reversed and Remanded in part and Affirmed in part. (bcw) (Entered: 12/27/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
12/27/2004	120	Case reopened (bcw) (Entered: 12/27/2004)
		* * * * *

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

Civil Docket No. CV-699-012

TONY GOODMAN, PLAINTIFF

v.

THE STATE OF GEORGIA AND
THE GEORGIA DEPARTMENT OF CORRECTIONS,
DEFENDANT

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

(Filed: Feb. 10, 2000)

Plaintiff, who is currently incarcerated at Macon State Prison in Oglethorpe, Georgia, filed this action alleging that Defendants violated his rights under the Americans With Disabilities Act, 42 U.S.C. § 12101, while he was an inmate at Georgia State Prison (GSP) in Reidsville, Georgia. Plaintiff filed a Motion for Summary Judgment with a brief in support. Defendants filed a Response and a Cross-Motion for Summary Judgment.

STATEMENT OF FACTS

Plaintiff claims that the State of Georgia and the Georgia Department of Corrections violated the Americans With Disabilities Act (ADA) by not providing him with reasonable accommodations regarding his disability and confinement to a wheelchair. (Pl.'s Compl., ¶ 1-3.) Plaintiff states that he has been confined to a wheelchair since 1992 because of a back injury suffered in a car accident. (Pl.'s Aff. Supp. Mot. Summ. J., Ex.

E.) Plaintiff complains that he was transferred from a medical prison that was equipped to deal with this disability to GSP, and while incarcerated there, Defendants allegedly failed to provide him with integrated services. (Pl's Compl., ¶¶ 3,6.) Plaintiff asserts that he was confined to administrative segregation at GSP and was denied accessibility to programs and services offered to similarly situated inmates. (Statement of Undisputed Facts in Supp. of Pl..'s Mot. Summ. J., ¶¶ 4, 14.) Plaintiff complains that the cell he was confined to lacked facilities for the disabled "for hygiene, drinking, and performing body excretion functions." (*Id.* at ¶ 22.) Also, Plaintiff points out a lack of wheelchair accessibility to the prison law library, church, and gymnasium. (Pl.'s Aff. Supp. Mot. Summ. J.; Miller Aff., Ex. P-11; Newsome Aff., Ex. P-12.) Plaintiff asserts that bathrooms, shower stalls, sinks, and entrances to buildings at GSP are not wheelchair accessible. As a result, Plaintiff allegedly lacked access to services and activities offered by GSP including counseling, education, vocational training, and recreation. (Statement of Undisputed Facts Pl.'s Mot. Summ. J., ¶¶ 14, 15.)

Additionally, Plaintiff claims that he requested, but did not receive, assistance from correctional officers in moving from his wheelchair to the toilet, shower and bed. (Decl. Support Pl.'s Opp'n. To Defs.' Mot. Summ. J., ¶ 15.) Plaintiff states that this lack of assistance caused him to have to sit in his own waste, to sleep in his wheelchair for long periods of time and to injure himself. In particular, Plaintiff states that he was injured when "hurling" himself from the toilet to his wheelchair on August 26, 1998. Plaintiff said that he also hurt himself on April 8, 1998 when he fell from a seat in the shower stall that was not designed for

handicapped individuals. (*Id.* at ¶¶ 16, 18; Pl.'s Compl. ¶¶ 36, 37.) Since filing his complaint, Plaintiff has been transferred from GSP to Lee Arrendale State Prison. He is now incarcerated at Macon State Prison, where he claims his disability is still not being reasonably accommodated by Defendants. Plaintiff is requesting injunctive and declaratory relief. In addition, Plaintiff seeks $600,000 in compensatory damages for mental suffering and $600,000 in punitive damages.

In their response, Defendants state that Plaintiff was assigned to segregated housing while at GSP because of his "disruptive conduct" and because of the "special requirements associated with his being wheelchair bound." (Defs.' Mot. Summ. J.) Defendants contend that Plaintiff is not a person subject to the Americans With Disabilities Act (ADA). Defendants also contend that the ADA cannot be applied to state prisons. (*Id.*) Finally, Defendants assert that Plaintiff's grievances concerning the alleged lack of reasonable accommodation of his disability were not substantiated when investigated by prison medical personnel. (Canady Aff., Ex. A.)

STANDARD OF DET MINATION

Summary judgment should be granted only if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The procedure for disposing of a summary judgment motion is well-established. The Court may grant summary judgment to a party when after a reasonable time for discovery, the evidence demonstrates that the non-movant has failed to establish an essential element of his case. The party moving for summary judgment bears the initial burden of meeting this exacting standard. *Adickes v. S.H.*

Kress & Co., 398 U.S. 144, 157, 90 S. Ct. 1598, 1608, 26 L. Ed. 2d 142 (1970). In applying this standard, the *Adickes* Court explained that a court should view the evidence and all factual inferences in the light most favorable to the party opposing the motion. All reasonable doubts regarding the facts should be resolved in favor of the non-movant. *Adickes*, 398 U.S. at 157, 90 S. Ct. at 1608.

Once the moving party has met this initial burden, the burden shifts to the opposing party to show that a genuine issue of material fact exists. *Celotex Corp. v. Catrell*, 477 U.S. 317, 324, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). The opposing party may not simply rest upon mere allegations or denials of the pleadings. Rather, the nonmoving party must make a sufficient showing of facts to establish the existence of an essential element to his case on which he will bear the burden of proof at trial. *Id.*; *Barfield v. Brierton*, 883 F.2d 923, 933 (11th Cir. 1989). To oppose the motion sufficiently after the movant has met his initial burden, the nonmoving party must point to evidence in the record or present additional evidence in the form of affidavits or as otherwise provided in Rule 56 of the Federal Rules of Civil Procedure. *Riley v. Newton*, 94 F.3d 632, 639 (11th Cir. 1996). If the record presents factual issues, the Court must deny the motion and proceed to trial. *Environmental Defense Fund v. Marsh*, 651 F.2d 983, 991 (5th Cir. Unit A 1981).[1] Summary judgment is also inappropriate where the parties agree on the basic facts, but disagree about the inferences that should be

---

[1] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

drawn from these facts. *Lighting Fixture & Elec. Supply Co. v. Continental Ins. Co.*, 420 F.2d 1211, 1213 (5th Cir. 1969).

DISCUSSION AND CITATION OF AUTHORITY

Plaintiff claims that GSP does not provide reasonable accommodation of his needs as a handicapped individual and that he was denied access to programs and services because he is disabled, a violation of the ADA. Defendants present several responses. First, Defendants claim that they are immune from suit under the Eleventh Amendment because the ADA is not a valid exercise of the Enforcement Clause of the Fourteenth Amendment. Secondly, Defendants claim that Plaintiff is not a person subject to the ADA. Additionally, Defendants contend that Plaintiff's claim is foreclosed by the Prison Litigation Reform Act. Finally, Defendants claim that Plaintiff is not entitled to injunctive relief because the relief he seeks, transfer to a medical prison, has been obtained and the issue is moot. The court will deal with each argument in turn.

I. ***States Are Not Immune to Suits Brought Under the ADA; However, There Is an Issue of Fact as to Whether Defendants Reasonably Accommodated Plaintiff's Disability***

"It has long been recognized that each state is a sovereign entity in our federal system and is not amendable to suit by an individual without its consent." *Garrett v. University of Ala. at Birmingham Bd. of Trustees*, 193 F.3d 1214, 1218 (11th Cir. 1999). *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54, 116 S. Ct. 1114, 1122, 134 L. Ed. 2d 252 (1996). However, Congress can pass laws giving citizens the right to a cause of action in federal court against an unconsenting state when it has "unequivocally expressed its intent to abro-

gate the immunity," and when it has acted "pursuant to a valid exercise of power." *Seminole*, 517 U.S. at 55, 116 S. Ct. at 1123.

The ADA includes a clear statement of intent to abrogate Eleventh Amendment immunity: "A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of (the ADA)." *Garrett*, 193 F.3d at 1218 (quoting 42 U.S.C. § 12202). In addition to Congress's expressed intent to abrogate immunity, the Eleventh Circuit Court of Appeals has held that Congress's adoption of the ADA was a valid exercise of power under the Enforcement Clause of the Fourteenth Amendment, *Kimel v. State Bd. of Regents*, 139 F.3d 1426, 1433 (11th Cir. 1998), *rev'd on other grounds*, __ U.S. __, 119 S. Ct 901, 902, 142 L. Ed. 2d 901; *See also Garrett*, 193 F.3d at 1218.

Defendants cannot claim Eleventh Amendment immunity from suit by Plaintiff because this circuit has held that the language of the ADA expresses Congress's intent to abrogate immunity and the Act can be enforced against the states under the Fourteenth Amendment. However, there is an issue of fact as to whether Defendants have reasonably accommodated Plaintiff's disability. Plaintiff states that Defendants discriminated against him by assigning him to a cell and prison that do not comply with the ADA. Plaintiff states that his cell at GSP was too small to accommodate his wheelchair. Plaintiff claims that correctional officers would not assist him in moving from his wheelchair to the toilet, bed, and shower. As a result, Plaintiff claims that he fell and injured himself. Specifically, Plaintiff states that he injured himself when he fell

while "hurling" himself from the toilet to his wheelchair. Plaintiff states that he also injured himself when he fell from a shower stall seat that was not designed to accommodate disabled people. Furthermore, Plaintiff assets that he was segregated and denied access to the law library, church, gym and other services and activities because he is wheelchair bound.

Defendants claim that Plaintiff was segregated because of his "disruptive conduct" and because of the "special requirements associated with his being wheelchair bound." In addition, Defendants claim that the medical personnel at GSP investigated Plaintiff's grievances relating to his accommodations and found that "no harm" occurred to Plaintiff.

II. *There Is an Issue of Facts as to Whether Plaintiff's a "Qualified Individual" Under the ADA.*

Defendants claim that Plaintiff is not a "qualified individual" under the ADA. The ADA confers rights on "qualified individuals with a disability" who are excluded from participation in or the benefits of "services, programs, or activities" provided by a public entity. 42 U.S.C. § 12132 (1990). A "qualified individual" is a person who "meets the eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2)(1990). "The statute defines the term to include anyone with a disability." *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, _____, 118 S. Ct. 1952, 1955, 141 L. Ed. 2d 215 (1998). Plaintiff states he is disabled, the result of a spinal injury sustained in a car wreck. Plaintiff has presented evidence he is a "qualified individual" under the ADA.

III. ***There Is an Issue of Fact as to Whether Plaintiff's Claim for Mental Suffering Is Foreclosed by The Prison Litigation Reform Act.***

Defendants contend that Plaintiff cannot bring a lawsuit under section 1997e(e) of the Prison Litigation Reform Act without showing a serious injury. Defendants rely on the Court's decision in *Harris v. Garner*, 190 F.3d 1279 (11th Cir. 1999) *rehearing en banc* 197 F.3d 1059 (11th Cir. 1999), which has been vacated. The physical injury requirement does not apply to Plaintiff's claims for injunctive or declaratory relief. *Harper v. Showers*, 174 F.3d 716, 719 (5th Cir. 1999). However, the Prison Litigation Reform Act requires a physical injury before a Plaintiff can recover compensatory damages for mental suffering. *Id.* (quoting section 1997e(e)), which states: "No federal civil action may be brought by a prisoner . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). The physical injury required by § 1997e(e) "must be more than de minimus, but need not be significant." *Id.* (quoting *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997)). In his complaint, Plaintiff claims that he was injured when he fell while transferring himself from his wheelchair to the toilet and when he was trying to move from his wheelchair to a seat in the shower stall. Defendants deny Plaintiff incurred a serious injury. This creates a genuine issue of material fact.

IV. ***Plaintiff's Demand for Injunctive Relief Is Not Moot***

Defendants claim that Plaintiff is not entitled to injunctive relief because he has been transferred from GSP to Macon State Prison and the issue is moot. "It is well settled that at the time a plaintiff brings his suit, he must have standing to prosecute his claim: he must

have a 'personal stake' in the outcome of the litigation. *Tucker v. Phyfer*, 819 F.2d 1030, 1033 (11th Cir. 1987). Plaintiff requested a transfer from GSP to a medical prison that could meet his needs as a disabled individual. Plaintiff claims that Macon State Prison, which is within the Georgia Prison System is not a medical prison. Plaintiff also states that he is suffering from the same lack of accessibility at Macon State Prison as he did while incarcerated at GSP; therefore, his claim for injunctive relief is not moot.

CONCLUSION

There are genuine issues of material fact concerning the following: (1) whether Plaintiff's disability has been reasonably accommodated by Defendants; (2) whether Plaintiff is a "qualified individual" under the ADA; and (3) whether Plaintiff's injury was serious enough to recover damages for mental suffering. Accordingly, it is my **RECOMMENDATION** that Plaintiff's Motion for Summary Judgment be **DENIED** and the Defendants' Motion for Summary Judgment be **DENIED**.

SO **REPORTED AND RECOMMENDED**, this 10th day of Feb. 2000.

/s/ JAMES E. GRAHAM
JAMES E. GRAHAM
UNITED STATES
MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

ORDER

(Filed: Mar. 6, 2000)

After a careful review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court.

The Motions for Summary Judgment filed by Plaintiff and Defendants are DENIED.

SO ORDERED, this 6th day of Mar., 2000.

/s/ B. AVANT EDENFIELD
B. AVANT EDENFIELD, JUDGE
United States District Court
Southern District of Georgia

FORM TO BE USED BY PRISONERS IN FILING A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983 IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

(Filed: Jan. 6, 1999, *nunc pro tunc* Jan. 4, 1999)

Tony Goodman

(Enter above full name of plaintiff or plaintiffs)

v.

O.T. Ray, J. Wayne Garner, A.G. Thomas, Johnny Sikes, J. Brady, Margaret Patterson, Whimbly, R King, State of Ga., Ga. Dept. of Corrections

(Enter above full name of defendant or defendants)

I. Previous lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action? Yes ____ No ____

If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using, the same outline.)

1. Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

_____

2. Court (if federal court, name the district; if state court, name the country):

   _____

3. Docket number: _____

4. Name of judge assigned to case: _____

5. Disposition
   (for example, was the case dismissed? appealed? is it still pending?): _____

   _____

6. Approximate date of filing lawsuit: ____

7. Approximate date of disposition: _____

8. Were you allowed to proceed in *forma pauperi* (without prepayment of fees)?
   Yes ____ No____

B. While incarcerated or detained in any facility, have you brought any lawsuits in federal court which deal with facts other than those involved in this action? Yes ____ No ____

If your answer to B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to previous lawsuit:

   Plaintiffs: _____

   Defendants: _____

2. Court (name the district): _____

   _____

3. Docket number: _____

4. Name of judge assigned to case: _____

5. Disposition
(for example, was the case dismissed? appealed? is it still pending?):

_____

6. Approximate date of filing lawsuit: ____

7. Approximate date of disposition _____

8. Were you allowed to proceed in *forma pauperis* (without prepayment of fees)?
Yes ____ No____

C. As to any lawsuit filed in federal court where you were allowed to proceed *in forma pauperis*, was any suit dismissed on the ground that it was frivolous, malicious, or failed to state a claim? Yes ___ No ___

1. If your answer to C is yes, name the court and docket number for each case:

_____ _____
_____ _____
_____ _____
_____ _____

II. Place of present confinement: G.S.P.

A. Is there a prisoner grievance procedure in this institution? Yes ✪ No ___

B. Did you present the facts relating to your complaint to the appropriate grievance committee: Yes ✪ No ___

C. If your answer to B is yes:

1. What steps did you take? Please see grievances #517-97-2290, 517-97-0297, 517-96-8080, 517-97-1623, 517-98-1762, 517-96-1080, 517-98-0766, 517-98-2347, 517-98-2128, 517-98-0417, 517-98-0466, 517-98-1157, 517-98-1678, 517-98-1083, 517-97-1551, 517-97-0235, 517-97-2431, 517-97-0234, 517-97-1036, 517-97-1422, 517-97-1030, 517-97-2289, 517-98-0819, 517-96-2191 See Page 9-A, for the other grievances #.

2. What was the result: DENIED

3. Did you appeal any adverse decision to the highest level possible in the administrative procedure? Yes X No

   If yes, what was the result: DENIED

D. If you did not utilize the prison grievance procedure, explain why not: _____

IV. Parties

(In Item A below, list your name as plaintiff and current address. Provide the name and address of any additional plaintiffs on an attached sheet).

A. Name of plaintiff: Tony Goodman
Address: G.S.P.
100 GA. Hwy. 147
Reidsville, GA. 30499-9701

(In Item B below, list the defendant's full name, position, place of employment, and current address. Provide the same information for any additional defendants in Item C below.)

B. Name of defendant: Johnny Sikes - ET. AL.
Position: Warden
Place of employment: G.S.P. See Page #18
Current Address: 100 GA. Hwy. 147
Reidsville, GA. 30499-9701

C. Additional defendants: _____

_____

_____

_____

_____

V. Statement of Claim

State here as briefly as possible the FACTS in your case. Describe how each defendant is personally involved in the depriving you of your rights. You must include relevant times, dates, places, and names of witnesses. DO NOT GIVE LEGAL ARGUMENTS OR CITE ANY CASES OR STATUTES. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

Please see Pages 1-18 - Attachments

VI. Relief

State briefly exactly what you want the court to do for you. Make no legal argument. Cite no cases or statutes.

Please See Pages 1-18

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 28th day of Dec. 1998

Prisoner No. 276619 /s/_____
(Signature of Plaintiff)

1. Plaintiff Tony Goodman, a black male, brought this race discrimination action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, - 2000e 17. The Equal protection clause of the Fourteenth Amendment to the United States constitution, as enforced by 42 U.S.C. § 1983. The due process clause, deliberate indifference and reckless disregard, cruel and unusual confinement and punishments

which involve the unnecessary and wanton infliction of pain, This aspect of the Eighth Amendment is involved in this case. Plaintiff also brought action under the Americans with Disabilities Act, Title II of the A.D.A., 42 U.S.C. §12132., 42 U.S.C. § 12131 (1)(B). 42 U.S.C. § 12101 et seg. ADA 42 U.S.C. §1997 et seg., the Civil Rights of Institutionalized Persons Act. Also, 42 U.S.C. § 2000 e 2 (m), 42 U.S.C. § 1988 and Title VII, This Court has jurisdiction under 28 U.S.C. § 1343. Plaintiff invokes the pendent jurisdiction of this court.

2. The Plaintiff, a handicapped Patient who was transffered [*sic*] away from a medical handicapped prison, To a non medical non handicapped prison, Plaintiff was denied and refused admission because of his medical history of hypertension Phychological [*sic*] problems and deterioration and also his handicap. Plaintiff sued Defendants Ga. Dept. of Corrections, J. Wayne Garner, A.G. Thomas, J. Sikes, O.T. Ray, J. Brady and *C.O. II Whimbly C.O. II—Margaret. Patterson*, _____, _____, _____, alleging that the exclusion violated the Americans with Disabilities Act of 1990 (ADA) Title II of which Prohibits "Public entity" from discriminating against the Plaintiff.

3. The above named Defendants have discriminated against the Plaintiff because of race and Disabilities when they transffered [*sic*] him away from the medical prison and refused and/or denied and/or excluded him from participation in MH/MR services, programs, and activities of the Prison (G.S.P.).

4. The Plaintiff seeks declaratory and injunctive relief, Prospective equitable relief, Reinstatement Back to the Medical Prison.

5. In this action Plaintiff are also alleging disparate treatment.

6. The Plaintiff also challeng [*sic*] his continued confinement in segregated environment, on the grounds of unlawful disability-based discrimination. Defendants have confined Plaintiff to (G.S.P.) where that Plaintiff could be appropriately treated in more integrated community setting. See Attorney General's consistent interpretation of regulation prohibiting State from providing services to individuals with disabilities in unnecessarily segregated setting was entitled to substantial deference. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. §12132; 28 C.F.R. §35.130(d).

7. The Defendant's failure to live up to its duty to provide a reasonable accommodation is unlawful disability–based discrimination under §35.130(d); the failure to provide the most integrated services appropriate to the needs of disabled persons constitutes unlawful disabiliy [*sic*]–based discrimination. Here the Defendants has violated the core principle underlying the A.D.A.'s integration mandate.

8. Each Defendant is being sued individually and in their official capacity.

9. Defendants are ultimately responsible for the training and supervision of this Prison (G.S.P.).

10. Plaintiff states the conduct, acts and omissions as complained of herein committed by the named defendants individually, jointly and in concert did deprive and deny Plaintiff of rights, benefits, privileges and immunities secured and guaranteed by the United States constition [*sic*] and law thereof.

11. Plaintiff states each named defendant herein this cause of action were at all material time acting over and/or under color of state law.

DISCRIMINATION

12. Plaintiff belongs to a protected class and was qualified for the position held; Plaintiff was discharged away from the medical prison despite his qualifications; and was replaced by a person outside of the protected class or was discharged while a person outside of the class with equal or lesser qualifications was retained.

13. The Plaintiff is black and is a member of a group protected by the anti-discrimination laws at issue in this case. Addition [*sic*], the Defendants housed a white person to fill the Plaintiff's position. The Plaintiff was at least as qualified as the white person to be housed in the medical prison at the men's C.I.,

14. Defendants A.G. Thomas and J. Wayne Garner degraded the Plaintiff by equating state prisons with slave auctions, by impliedly threatening the Plaintiff with references to the Klu Klux Klan, and by essentially telling the Plaintiff that he was worthless because of his race.

15. The above Defendants and their agents has separate housing units for black patients based on race. There is racial discrimination by the above named defendants and their agents in the assignment to the prison INF. cells and also to the assignment to prison segregation and s/c units. Patients of color has been refused and denied of the better living area & cells because of their race or given only the menial cells while caucasian prisoners are assigned to the higher status and better living areas. The above named defendants and their agents are discriminating against black

patients, Black patients are being discriminated against and denied of the INF. cells, Evidence showes [*sic*] that black patients are disproportionately overrepresented in punitive segregation units and that they are the overwhelming majority punished.

16. The above named defendants and their agents have a racially stereotypic and demeaning attitude toward the Plaintiff and other patients of color, e.g., "blacks are more aggressive than caucasians" and/or "blacks are afraid of a bath and are very low life's, disgusting and nasty.

17. 95 percent of the patients assigned to punitive segregation over the past year are patients of color when they represent only (5) percent of the prison population.

18. Plaintiff have found that the classification procedures of the penitentiary (G.S.P.) are inadequate, This results in overclassification of a substantial number of prisoner, such that these prisoners and the Plaintiff are placed in maximum custody, when lesser degrees of custody would suffice. The principal reasons for this are that there are insufficient staff members to give adequate time to each case, and staff members are inadequately trained.

19. The above acts was did in retaliation & discrimination and has deprived the Plaintiff and other patients of color of an interest or right which has been granted to them, Pursuant to a rule, statute, or regulation promulgated by the State and such interest do require procedural due process.

CELLS TEMPERATURE

20. Plaintiff are being confined in a cold cell with no clothes or shoes, and with a plastic-covered mattress, filth on the cell's floor and walls, deprivation of running water, and the earlier occupancy of the cell by an inmate afflicted with an *HIV* virus. The temperature was as low as 45 degrees, that it was "ice cold", that Plaintiff slept in his wheel chair. Plaintiff was confined in a cell where his w/c, was initially the Plaintiff's bed. A mattress was furnished at a later date, it was so cold that the Plaintiff tore open the mattress and nestled inside.

21. The Plaintiff are being confined in a cell without clothing or shoes, where sleep are impossible and that he are being forced to set [*sic*] in his w/c, 24 hr. per, day. These conditions, too violated his Eighth Amendment rights in the absence of mental derangement. Plaintiff states that the heat in his cell was maintained at an unreasonably low temperature and that there's this big large, loud, noisy, powerful roaring machinery on the out side of the window of the cell which blows air into the cell, this machin [*sic*] blows hot air into the cell during the summertime, and blows cold air into the cell during the winter time, and roars 24-hr. per day which inflicts pain without Penological justification. The lack of heat as well as the lack of ventilation was "severe enough to produce physical discomfort."

22. The Plaintiff have been diagnosed with a medical history of headaches, heartaches, and spine problems and pain, Includes asthma and bronchitis which requires the use of ventolin. He have confined to a w/c for more then (7) years, and he is being kemped [*sic*] in a very small cell [K-1-cell#8] (12-feet long and 3-feet

wide) which he can not ture [*sic*] his w/c around in side [*sic*] of this cell. Also, during the summertime there's very little ventilation in side of this cell, He have a very hard time trying to breath inside of this cell. The temp inside of this cell are very high and there are also very high % of humidity inside of this cell, which caused him very bad pains at chest with shortness of breath and blackouts.

23. The Defendants can not simply allow the prison cells to become an ice box in the winter and sauna in the summer, also, heating and ventilation and A.C. which is excessive for some areas and inadequate for others is one of a totality of conditions that violate the Constitution.

RETALIATION – SEE GRIEVANCE #517-98-0466

24. Plaintiff that the [K-1 unit] cells lacks facilities for the disabled "for hygiene, drinking and performing body excretion functions."

25. Defendants and agents have in various ways retaliated against Plaintiff for filing lawsuits, for instance, whereas before this and other lawsuit Plaintiff was assisted in using the toilet, and bed, now he is given no assistance at all and has fallen off the toilet and suffered injuries from the fall.

26. On 2/6/98, the date of the hearing in the cases *Goodman v. J. Wayne Garner, et al.*, - CV-#697-107 and CV - #697-65. one (1) of my two (2) approved rings was confiscated by Defendants and their agents, This was did in retation [*sic*] for utilizing the 42 U.S.C. § 1983 Procedures. This was did to punish the plaintiff by the Defendants, for engaging in constitutionally protected activity. On 2/13/98, Plaintiff filed grievance against defendants and their agents see—grievance #517-98-

0466. On 3/11/98, defendant Sikes' responded to the grievance stating: The ring will be returned to you. On 3/18/98, at approx. 2:00 p.m. C.O. II Mr. C. Durrence returned plaintiff ring back to him, But one (1) of the stones (sets) were missing from the ring. On 3/18/98, plaintiff file his appeal to the Division Director. On 3/24/98, Investigator Mr. John Cook from the Division Director's office came down to his cell to talk with him concerning the above named ring, On 3/24/98, Investigator John Cook ordered C.O. II Ms. Mary G. Ceasar to confiscate plaintiff's ring. As of this date plaintiff have not received a response from the Division Director office.

GRIEVANCE PROCEDURE & P.L.R.A.

27. Pursuant to Georgia statewide Grievance Procedure Reference #B05-0001. Effective Date: 1/1/96, states as follows: The Warden's/Superintendent has thirty (30) day to respond to the grievance. However, the Warden can place a ten (10) day extension on the grievance in order to review and/or conduct the investigation, the Warden can only request a ten (10) day extension which would be a total of forty (40) days to respond to the grievance. The inmate then has four (4) calendar days to appeal the Warden's response. The next step is to appeal the grievance to the Division Director who has ninety (90) days to respond to the grievance, see grievance #517-97-1551, the Division Director can not request any extensions he has only (90) days to respond which ends the grievance within a total of one hundred and thirty (130) days which would also exhaust plaintiff's administrative remedies.

28. Georgia Dept of Correction & the George State Prison are refusing to make timely responses to the inmate grievance forms. The Georgia Dept. of Cor-

rection are not in compliances with their own rules & regulations, and it takes them more than a year to make a final response to the inmate Grievance forms.

29. Pursuant to, a court order dated Jun. 25, 1998, from Magistrate James E. Graham, and District Judge William T. Moore of the Southern District of Ga. in the case of *Tony Goodman v. J. Wayne Garner et. al*, Civil Action No. CV-697-107, states as follows: "Quote" Georgia State Prison's Local operating procedure 503.1 Provides the proper procedure that an inmate must follow to file a grievance. The inmate is required to file a grievance with his counselor, and if the grievance is denied, the inmate may appeal the outcome to the Division Director. only after the Division Director denies an inmate's appeal has the inmate exhausted his administrative remedies, "unquote" [.]

30. If the Plaintiff does not receive a response from the administrative grievance program within the two years statute of limitations, and if cause of action accrued two (2) years before the statute of limitation ended, and Plaintiff did not file complaint because the prison administrative grievance program refused to file a response to Plaintiff's grievance within the two (2) years of statute of limitation, would Plaintiff's claim be barred?

ACCESS TO THE PRISON LAW LIBRARY

31. The above named Defendants have denied Plaintiff of adequate access to the law Library because simply providing Plaintiff with a copy of pages from a book in his cell, if he requests them, gives the Plaintiff no meaningful change [*sic*] to explore the legal remedies that he might have. Legal research often requires browsing through various materials in search

of inspiration; tentative theories may have to be abandoned in the course of research in the face of unfamiliar adverse precedent. New theories may occur as a result of a chance discovery of an obscure or forgotten case. Certainly plaintiff unversed in the law and the methods of legal research will need more time or more assistance than the trained lawyer exploring his case. It is unrealistic to expect the Plaintiff to know in advance exactly what materials he needs to consult.

60-80 SQUARE FEET

32. Overcrowding necessarily involves excess limitation of general movement as well as physical and mental injury from long exposure. The finding that 60 square feet of living space was the minimum amount of square footage which the Eighth and Fourteenth Amendments require that the defendants provide to the Plaintiff, a necessary corollary to this ruling is that the defendants must provide within such living space reasonably adequate ventilation, sanitation, bedding, hygienic materials, and utilities (i.e. hot and cold water, light heat, + plumbing). In short, the defendants must provide to the Plaintiff shelter which does not cause his degeneration or threaten his mental and physical well being, But the Plaintiff are being denied of that shelter. Plaintiff are not considered member of the general prison population since he is locked in his cell on average of 23-24 hours a day. This cell do not provide him the 60 square feet of space required. Plaintiff note that there is a wide-spread deficiency in living space aside from the deficiency in cell size, the building where the Plaintiff live is in a serious state of disrepair and fail to meet minimal health and safety needs of the Plaintiff. For example, the existing heating and ventilation systems are incapable of providing adequate temperature

control and ventilation in the cellhouses used by the Plaintiff. Defendants has allowed the prison cells to become an "ice box" in the winter and a sauna in the summer, also, heating and ventilation which is excessive for some areas and inadequate for others is one of a totality of conditions that violate the constitution. In adequate [*sic*] ventilation, especially in the cells and shower areas, results in excessive odors, heat, and humidity with the effect of creating stagnant air as well as excessive mold and fungus growth, thereby, facilitating personal discomfort along with health and sanitation problems. For the last (10) months Plaintiff have been forced to sit in his own waste, denied of catheter, denied of rehabilitative exercises, denied of assistance in being transferred from his w/c, to the bed all of which resulted, among other things, in the Plaintiff not getting a bath or a shower for (10) months. The bedding in Plaintiff's cell was heavily stained and soiled, and was not cleaned or changed when he was assigned to the cell without doubt the defendant's inability to meet minimal shelter and sanitation standards contributes immeasurably in making the main living areas unfit for human habitation, unquestionably, the small cells in which Plaintiff are confined, along with the deteriorating and unsanitary conditions in the main living area, have a direct detrimental impact on the health and well being of the Plaintiff. The conditions in which the Plaintiff are confined at (G.S.P.) are "grossly inadequate and constitutionally impermissible.

Plaintiff appeal all adverse decision to the highest level possible in the administrative procedure, see the below grievances:

517-97-2297
517-97-0297
517-98-0080
517-97-1623
517-98-1762
517-96-1080
517-98-0766
517-98-2347
517-98-2128
517-98-0817
517-98-0466
517-98-1157
517-98-1678
517-98-1083
517-97-1551
517-97-0235
517-97-2481
517-97-0234
517-97-1031
517-97-1422
517-97-1030
517-97-2289
517-98-0819
517-96-2191
517-98-1356
517-96-1081
517-98-1524
517-98-0818
517-98-2190
517-97-0041
517-97-1997
517-96-2478
517-97-0589
517-97-2459
517-98-0079
517-96-2252
517-96-1589
517-98-1084
517-97-1372
517-97-1815
517-98-0766
517-97-0938
517-98-1357
517-98-1904
517-98-2127
517-98-2347
517-98-2128

PHYSICAL PLANT

33. The Plaintiff found that the Physical Plant at the penitentiary was old, dilapidated, and ill-maintained, "These conditions were found to have serious health implications for Plaintiff, inmates and staff." More specifically the Plaintiff found: 1.) overcrowding posed an increased threat of the transmission of communicable diseases. Cell sizes as prescribed by the (A.C.A.) were required. (2.) Lighting was substandard. This caused Plaintiff eye strain and fatigue and hindered attempts to ensure that basic sanitation was being maintained. (3) Plumbing was unsatisfactory and presented a threat of waste water contamination of drinking water. (4.) Fire prevention was substandard, creating danger of fire in most living areas. (5.) Food service did not meet public health standards. Problems included temperatures at which food is stored, rodents, and unsanitary conditions. (6.) There are evidence of vermin infestation throughout the prison. (7.) The prison lacked an effective preventive maintenance pro - gram . (8) Ventilation are inadequate and air is generally dank. (9.) There are serious safety hazards in occupation and living areas. (10) Cell cleaning supplies were inadequate and often unavailable. The Plaintiff concludes that "the general condition of the Penitentiary's Physical Facilities when considered in their totality . . . Falls below minimum standards of decency and conditions of confinement and violates Plaintiff's Eighth Amendment rights.

FOOD SERVICE

34. The above named defendants and their agents are in violations, the health department standards and codes, in determining whether the conditions in the food service area violate constitutional standards. As

Plaintiff noted earlier, the State and the above named defendants must provide Plaintiff with a "healthy habilitative environment." This includes providing nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well being of the Plaintiff who consume it. Inmate and Staff workers are not given basic instruction on food protection and food service sanitation. Food when it is being served to Plaintiff, is kept at substandard temperatures due to the improper use of the available equipment. Plaintiff will uphold his findings and conclusion that the conditions in the food services areas at (G.S.P.) "are grossly inadequate and constitutionally impermissible." See-Grievances #517-98-1357, 517-98-1524, 77813, 81290, 517-98-1356, 517-97-1623, 517-98-1157, 517-98-0818, 517-98-1084 & 517-98-0818.

35. The Georgia Dept. of Corrections and the (G.S.P.) are using nonhandicapped vehicles which are not insured by their insurance company to transfer handicapped patients from one place to another.

36. On 5/5/98, at approx. 5:30 a.m. The Defendants and their agents transffered [*sic*] Plaintiff from the Georgia State Prison in Reidsville, Ga. To the federal court-house in Atlanta, GA. The vehicle was not equipped for handicapped passengers/Plaintiff. The above named agents picked Plaintiff up and out of his w/c by his arms and legs and put him inside of the vehicle and the seat which he was seated in was not stabilized or secure, the above named agents fail to stabilize and secure Plaintiff in the seat where he was seated caused him to suffer injuries and pains at head, neck, back, stomach and legs. Plaintiff was forced to ride handcuffed and shackled in the back of a van

without seatbelts or restraints. As a result, he fell to the floor and lost consciousness several times. Upon, Plaintiff's arrival back here at (G.S.P.) which was at approx. 5:00 p.m. Plaintiff made request to C.O. II Hays and C.O. II B. Smith, to see someone from medical, Mr. Hays called the medical dept. but medical failed to prescribe pain medication or proper bedding, medical also refused to see or exam the Plaintiff.

36. On 8/26/98, at approx. 9:00 p.m. I was trying to transfer from the toilet to my wheel chair, with the fact that the toilet set [*sic*] which is over his toilet is not stabilized or secure and this cell is much to small, Plaintiff had to literally hurl himself from his w/c onto the toilet, when he attempted to return to his w/c, the Plaintiff slipped and fell onto the floor causing an epileptic seizure, and leg + foot injurey [*sic*]. Plaintiff fell to the floor broke his right toe and crushed his right knee. J. Sikes, J.W. Garner, A.G. Thomas, J. Brady, O.T. Ray, Dr. Lowry, DC Mailloux, Barbara Werth, L. Waters, J. Bradford, J. Paris and Lynn D. Smith had knowledge and notice that he was not secured, safe or stabilized in this cell, Despite the above named agents knowledge of his precarious and perilous placement within the prison/cell the above named agents proceeded to house him in a prison cell which was in total disregard of his health, safety and well-being.

37. On 4/8/98 at approx. 1:00 p.m. C.O. II Whimbly took a toilet set [*sic*] into the shower for the Plaintiff to sit on while showering but the toilet seat is not accessible, Plaintiff was trying to transfer from his w/c to the toilet chair but the toilet seat turned over and he fell to the floor and was hurt at the head, neck left arm, nurse make came down to the unit (K-1) and took his b/p and

then walked away. Plaintiff was denied x-rays, or any other medical care.

ACOUSTICAL WALL COVERINGS

38. Plaintiff request the above named defendants to install, inter alia, sound-absorbing wall coverings in the K-1-unit, because the level of noise in the K-1 unit inflicts pain without penological justification. There's this big large, loud, noisy, powerful roaring machinery on the outside of the window of the cell which blows air into the cell, this machin [*sic*] blows hot air into the cell during the summer time, and blows cold air into the cell during the wintertime, and roars 24-per day which inflicts pain without penological justification.

LIGHTING

39. In Plaintiff's inspection of G.S.P. he found that lighting throughout housing units was substantially less than that considered necessary for reading, writing and the maintenance of proper personal hygiene. While stating that a minimum of 30 foot candles is considered necessary, the lighting in many cell was measured at less than 10 foot candles. Indeed, of the (14) readings taken in G.S.P. K-1 unit not one met or exceeded the 30-foot candle minimum standard. The lighting level in some cell was as low as 8-foot candles. Also, the near exclusive reliance upon artificial light can in and of itself have a deleterious effect upon the Plaintiff.

PRIVACY

40. On 4/28/98, at approx. 9:30 am C.O. II Margaret Pattterson and two (2) other C.O.'s John Doe's came over to the window of Plaintiff's cell during the time he was putting his catheter on and connecting it to the drainage unit. from approx 9:30 am until 9:35 a.m. agent M. Patterson allowed herself to view his body, at close

range and for extended periods of time, at approx. 9:35 a.m. agent Patterson walked back to her post. At approx. 9:50 a.m. Ms. Patterson again came over to the window of his cell and allowed herself views of his body at close range and for extended periods of time. At approx. 9:55 a.m. Ms. Patterson walked back to her post. This have resulted in retaliatiatory [*sic*] surveillance of his cell activities by Ms. Patterson for purposes of harassment and humiliation. The Policy and practice of according female prison guards full and unrestricted access to all areas of the housing unit of the prison allows the female guards to view him performing necessary bodily functions in his cell and also to view his naked body in the cell area. Plaintiff finds this Policy and practice humiliating and degrading and that it violates several of his constitutional rights: Plaintiff First amendment right to practice his religious beliefs (to observe the "Fundamental Christian tenet of modesty"), his limited fourth amendment right to privacy, and his eighth amendment right to be free from cruel and unusual punishment. Female prison guards allowed themselves unrestricted views of his naked body in cell, at close range and for extended periods of time, to retaliate against, punish and harass him for asserting his right to privacy.

POLYURETHANE FOAM

In the view of the Plaintiff, the most startling "Fire safety deficiency at G.S.P. is the prison's continual extensive use of pillows and mattresses made of Polyurethane foam. That material has been known for years to emit deadly fumes when burned, and G.D.O.C. Policy has for several years prohibited its use. Although Warden J. Sikes states that all Polyurethane mattresses and pillows has been replaced I'v [*sic*]

discovered otherwise. of the 17 G.S.P. INF. cells that I'v [*sic*] checked there were 10 Polyurethane mattresses and 4 Polyurethane pillows in use, also I'v [*sic*] discovered otherwise of the 11 G.S.P.-K-1 unit cells that I'v [*sic*] checked there are 2 Polyurethane mattresses in use. Also, the cells in K-1 has no key-locks, the only way the cell doors can be open or closed is through an electric control box, there are no key-locks on any of the cell doors, if it were a fire are [*sic*] some other kind of emergency there would be no way out without further injures [*sic*], because there's only one way to un-lock the cell doors. Fire escape Plans must be communicated to the Plaintiff and prominently displayed in his cell at all times, which the defendants has fail to do. Noting that safety from fire is an aspect of shelter, and as such is properly an area of Eighth Amendment concern. Plaintiff further complain that even where such exits exist, they are ineffective because of the defendants' lack of a fire evacuation plan and failure to prepare for a fire by conducting fire drills. See Grievances #517962191 and 517-98-0819 and 517-98-1084.

42. The Plaintiff have been here at (G.S.P.) for more than two (2) years, and have never had, not one fire drill. The defendants are allowing officers and inmates too [*sic*] smoke inside of the unit, and the smoke alarms repeatedly go's [*sic*] off. Plaintiff is being exposed to fumes from Tobacco smoke, which has caused him pain and sickness of stomach and chest, with the fact that there is no or very little ventilation inside of these cell.

FOOD SERVICE cont'd See Grievance #517962190

The Plaintiff request for a "*steam table*" to be put in the K-1 unit, If other units here at (G.S.P.) can have a steam table, the patients of the K-1 unit can also have a steam table.

CONFIDENTIAL LEGAL MAIL

43. On 7/20/98, at approx. 2:00 p.m. the defendants and their agents gave Plaintiff personal & confidential legal mail to another inmate, and this is not the only's [*sic*] time this have happen. This is a deprivation of his constitional [*sic*] rights, as well as Prison Policy. This will also cause Plaintiff to suffer irreparable injury if he don't get this legal correspondence soon. Such conduct by prison officials is a clear violation of the Eighth Amendment. Plaintiff also, have reason to believe that the officers who delivers the mail are not trained mail officers, and they can not read or write. The above acts was did in retaliation for the exercise of constitionally [*sic*] protected rights against prison officers. Also, on 11/11/98, Defendants and their agents intentionally, understandingly [*sic*], willfully and maliciously deprived and denied Plaintiff of access to the courts and to possess his legal papers to pursue his cases pending at bar of the courts. The deprivation of his legal materials clearly violates the constitution, and also constitutes irreparable injury. Every day the prison officials retain the materials he is delayed in filing his challenge to his cases, and every day increases the risk that the officials will lose or destroy the materials.

44. The Plaintiff sensed that Defendants and their agents harbored some resentment against the Plaintiff because of the racial allegations and claims lodged against Defendants and their agents in this litigation, as well as other litigation. This resentment have very-well lead to an antagonistic relationship between defendants their agents' and the Plaintiff. Moreover, Defendants and their agents have developed even more hostility toward the Plaintiff. Defendants and their agents Ms. Lisa Waters, Carolyn A. Mailoux, Barbara

Werth and McLowery have made death threats against Plaintiff's life.

PLAINTIFF MAKES RELIF [*SIC*] AS FOLLOWS:

A. Plaintiff request that the court appoint amicus curiae, and for the order to provide that the Department of Justice and the United States Attorney "investigate fully the facts alleged in the complaints, . . . participate in the case with the full rights of parties, and . . . advise the court on the public interest(s) at issue." The district court has broad discretion to appoint "*amici curiae*".

B. The Plaintiff respectfully request that he be given access to a copy service, which would give him the opportunity to file the above named grievances.

C. To order the State/Defendants to comply with the A.D.A. and the A.C.A.'s standards relating to the housing of prisoners in segregation, ISO, and protective custody. This creates an extreme hazard to the physical and mental well-being of the prisoner and that the use of these segregation cell is an unnecessary and wanton infliction of pain, without penological justification. Plaintiff are subjected to intolerable, inhumane, and unconstutional [*sic*] conditions. The level of violence was caused by overcrowding, idleness, deteriorating physical plant, inadequate medical and psychological care, and "other condition". The prisoners were suffering from psychological deterioration, which created an atmosphere of fear, anger, and frustration in the prison. There is a pattern and practice of brutality and harassment by the prison guards. Noneless [*sic*], guard brutality was the norm. It was encouraged by peer pressure among the guards and facilitated by indifference on the part of the administration. Guard brutality

included arbitrary shake downs, theft, destruction of the private of inmates assault on the inmates.

D. The long periods of deprivation of basic amenities, with Plaintiff locked in his cell without showers, baths, adequate ventilation or heating, recreation, work, medical and MH/MR care, laundry service, cleaning service, and phone service, render the lock down unconstitutional.

E. There is evidence that defendants and their agents have retaliated against Plaintiff for his involvement in lawsuits and grievances. This retaliation has consisted of verbal harassment, threats, and transfers to other institutions. Plaintiff have the right to petition the courts for redress of his grievances, harassment, threats, and transfers by prison officials that interfere with or penalize the exercise of that right violate the constitution.

F. Grant Plaintiff all attorney fees.

G. Grant Plaintiff prospective injunctive relief.

H. Grant Plaintiff at least $600,000.00 for punitive damages from each individual named Defendant.

I. Grant Plaintiff at least $600,000.00 for pain and suffering from each individual named Defendant.

J. Grant Plaintiff at least $600,000.00 for mental suffering from each individual named Defendant.

K. Grant Plaintiff an Declaratory Judgment and injunctive relief.

L. Grant Plaintiff any further relief as this court may deem appropriate.

M. Plaintiff hereby demands a trial by jury on all triable issues before this court.

N. Plaintiff hereby move, inter alia, for the appointment of counsel.

[Service list omitted in printing]

I declare under penalty of perjury that the foregoing is true and correct.

Date: 12/28/98

/s/ TONY GOODMAN
TONY GOODMAN
G.S.P.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

No. CV699-0012
(formerly MC299-01)

TONY GOODMAN, PLAINTIFF

v.

O.T. RAY, ET AL., DEFENDANTS

(Filed: May 17, 1999)

EMERGENCY MOTION FOR T.R.O. AND/OR P.I.

* * * * *

Statement of Facts

* * * * *

On 8/26/98, 12/17/98, 3/16/99, 3/18/99, and 4/11/99, Plaintiff was trying to transfer to or from the toilet, to or from his wheel chair he fell to the floor broke his right toe and crushed right knee. Plaintiff is also suffering from cellulitis to the feet.

On 8/26/98, at approx. 9:00 p.m. Plaintiff was trying to transfer from the toilet to his w/c. The toilet set [*sic*] which is over his toilet is not stabiled [*sic*] or secure, and his cell is much too small. Plaintiff had to literally hurl himself from his w/c, onto the toilet, when he attempted to return to his w/c, he slipped and fell onto the floor causing an epileptic seizure, and leg, hip, toe and knee injuries.

Defendants and their agents has and had knowledge and notice that Plaintiff was not secured, safe or stabilized in this cell. Despite the above named agents knowledge of his precarious and perilous placement within the prison/cell the above named "*Defendants* and agents proceeded to house him in a prison cell which was in total disregard of his health, safety and well-being.

* * * * *

Plaintiff states that "the totality of circumstances in his injures can be held to be unconstitutional" because the evidence clearly shows that his injures [*sic*] "has not improved over the last few year", that his injures [*sic*] has increased significantly under the directorship of defendants and their agents' deliberate indifference and/or reckless disregard to Plaintiff's safety and well being as well as his medical needs.

Plaintiff can not stand or walk and have been confined to a w/c, for (7) years or more. He's suffering from intense legs, arm, back, neck, chest, head, stomach and eye pains with cramps and weakness,—Plaintiff do not have any controll [*sic*] over his B/M or urine.

On 5/12/99, at approx. 11:00 a.m. Plaintiff had a B/M and urine, on himself, He requested to the S.M.U. Capt. Mr. Brown, Mr. Smith, and Mr. Hall for cleaning supplies, laundry service and assistin [*sic*] in cleaning his w/c, and cell, but they all refused to do so. He was forced to live in a cell where the floor was smeared with defecation and urine. Despite his requests to the above named agents for cleaning supplies and assistin [*sic*], he was required to live and sit in his own body waste. The above named Defendants and agents has observed Plaintiff in pain and the holing [*sic*] of his head stomach

and leg and ignored repeated indications of worsening condition. Even though prison physicians state that care currently provided to prisoner is adequate, court rules that treatment prescribed by outside physicians must be provided to paraplegic prisoner; among the treatment described by prison physicians as adequate was treatment that provided no special toilet facilities for the prisoner, but instead required him to lie in his own waste, failure to change or clean catheter, failure to provide rehabilitative exercises, and failure to provide any assistance in preventing dangerous bedsores. See *Lee v. McManus*, 543 F. Supp. 386, 389-93 (D. Kan. 1982).

On 11/3/98, Plaintiff made request to Counselor L. Smith for MH/MR services. Mr. Smith told him that he would make him an appointment with mental health, but no appointment was ever made.

On 12/3/98, Plaintiff made a request to MH/MR Counselor Mr. Shryock for mental health services, he told the Plaintiff that he would make him an appointment with Dr. Ann Chistie, as of this date Plaintiff have not been seen by anyone from mental health.

On 5/7/99, at approx. 10:00 a.m. Plaintiff made requested to Counselor Seago for MH/MR services and she said she would make him an appointment with mental health, as of this date Plaintiff have not been seen by anyone from mental health, he have been denied of those services.

Plaintiff is being discriminated against because of his disabilities, and this type of transfer was made to punish the Plaintiff for engaging in constitionally [*sic*] protected activity. Defendants and their agents has impended danger against Plaintiff's life this was did in

retation [*sic*] for utilizing the 42 U.S.C. § 1983 procedures against the State of GA.

Argument and Citation of Authority

F.R.C.P. authorizes the trial court to "make any order which justice requires to protect a party or person from pain and suffering, reckless disregard and deliberate indifference. The Plaintiff is presently being held by the GA. Dept. of Corrections and has a history of medical problems and is presently suffering from those problems which is causing disastrous effects on the mental and physical health of the Plaintiff.

* * * * *

Conclusion

Plaintiff respectfullys [*sic*] request that this court grant his motion for a Protective Order.

This 14th day of May 1999

G.S.P.

/s/ TONY GOODMAN
TONY GOODMAN

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

Plaintiff's Motion to Amend His Emergency Motion for T.R.O. and/or P.I.

(Filed: May 24, 1999)

On 5/14/99, at approx. 6:00 a.m., Plaintiff Goodman was in need of a B/M, he was trying to transfer to the toilet, from the w/c, but he fell to the floor broke his left foot and crushed his left knee, he then had a B/M on himself, on his w/c, and on the floor, at approx. 6:15 a.m. Captain Brown, came over to Plaintiff's cell and observed him on the floor in pain, at that time Captain Brown, ordered Plaintiff to clean his cell, Plaintiff told him that he could not stand or walk and that he could not clean the cell because he is not able to do so. Plaintiff Goodman then sought help with Captain Brown for medical care and treatment but Plaintiff's request for medical care and treatment was denied and ignored by Captain Brown.

Because Plaintiff Goodman is not able to clean his cell Captain Brown removed all legal materials and other property from Plaintiff's cell. Plaintiff is being denied of all privileges and rights that other similar security inmates have access to.

As of to date Plaintiff are being denied of access to his legal materials and, to the law library, which is in retaliation. Pursuant to F.R.C.P. (41); and local Rule 15.1. If, Plaintiff does not press these cases forward, the courts may dismiss them for want of prosecution. I do not want my cases dismissed.

It is furthermore a fact and reality defendants and their agents have intentionally, understandingly, willfully and maliciously deprived and denied Plaintiff Goodman of access and/or possess his legal papers to pursue his cases pending at bar of the courts. Plaintiff Goodman would be grateful if the court would consider a motion pursuant to Rule 65, FRCP) for a T.R.O. and/or P.I., or a protective order. Plaintiff has attempted by letter to Defendants and their agents in order to end these problems, but it have did no good.

Warden Hilton Hall and the S.M.U. Manager Mr. V. Smith, has–and–had knowledge of Captain Brown's activities but fail to take corrective measures amounted to deliberate indifference and reckless indifference.

1.) No, Plaintiff do not have access to the windows of his cell because he can not stand.

2.) No, Plaintiff do not have access to the wall plugs of his cell because he can not stand.

3.) No, Plaintiff do not have access to the bed of his cell because he can not stand and have been forsed [*sic*] to sleep in his w/c, for more than two (2) years.

4.) No, Plaintiff can not turn his w/c, around inside of his cell or the shower because the cell ano also, the shower are much too small, and Plaintiff have not had a shower for more than two (2) years.

5.) Yes, able-bodied inmates have access to the above location, but the Plaintiff do not have access to the above location, because the location are not accessible from his w/c.

* * * * *

As of this moment I am in great pain & am in need for emergency help, I am being housed & treated as if I am a isolation inmate being hidden with no rights at all.

As a matter of law, the continuing deprivation of constitional [*sic*] rights, constitutes irreparable harm. See *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673 (1976).

The Plaintiff is threatened with irreparable/harm because of the nature of his injury, with loss of movement and function. If he does not receive proper treatment at the proper time, he may never walk normally again. He is also sufering [*sic*] from anxiety and depression.

This is a Declaration In Support of Plaintiff's Motion for a T.R.O. and/or Restratning [*s i c*] Order/Preliminary Injunction.

Pursuant to 28 USC § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on this 16th day of May, 1999.

G.S.P.

/s/ TONY GOODMAN
TONY GOODMAN

* * * * *

[Service list omitted in printing]

[EXHIBIT A]

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

(Filed: May 24, 1999)

I, Tony Goodman do declare under the penalty of perjury the information set forth herein below are true and corect [*sic*].

1.) I am the Plaintiff named in the above-styled case.

2.) I file this cause of action in good faith.

3.) I verily believe I am entitled to the redress herein. I do not enter and file this cause of action for any type of harassment and undue hardship and burdensome upon defendants.

4.) I state the named actions by defendants "set forth herein this cause of action and intelligently, understandingly, knowingly and voluntarily deprived and denied me certain rights, benefits, privileges and immunities secured and guaranteed to me by the United States Constitution and law thereof.

5.) The (P.H.S.) (D.O.C.) and (G.S.P.) are responsible for providing all doctors, nurses, physician assistants, therapists', physician and other medical staff at State prisons, probation detention centers, halfway houses, and prison boot camps.

6.) The Delaware company that landed a five-year $300 million medical contract to care for state inmates during October-1995, were fined $260,000 for staffing shortages at two prison in isolated areas of the state, documents show.

7.) The Dept. of Corrections also has notified Prison Health Services Inc. that it could be fined another $10,000 a day for unacceptable staffing shortages at four other prisons.

8.) In the first month of the contract, which began Oct. 1, 1995, PHS failed to provide enough medical personnel at the Georgia State Prison at Reidsville and the Telfair Correctional Institution at Helena, triggering the $260,000 fine.

9.) This company is also financially responsible for medical tests, specialized treatment and emergency care for almost 40,000 men and women in Department of Corrections custody. The detailed contract—the largest of its kind in the nation—spelled out how many health care professionals must work at each facility, how long doctors must spend with inmates and how quickly they must report test results which (P.H.S.) (D.O.C.) and (G.S.P.) has failed to do so. Pursuant to the contract, Regulation and (S.O.P.'s) and also to the safety and well being of myself as well as other patients here at the (G.S.P.). The above named Defendants are in violation of their own contract, Regulation, and (S.O.P.'s)—*AS OF TO DATE*, there's only one (1) Doctor here at (G.S.P.). (PLEASE SEE EXHIBIT "B")

10.) The above named defendants and their agents must/but has refused to meet the medical needs of disabled plaintiff and furnish the assistance that he require in order to live a minimally decent life in prison.

The defendants must/but have refused to take plaintiff as they find him and provide facilities compatible with his physical condition that meat [*sic*] civilized standards of decency, as follows: A) The space allowance and reach ranges for wheel chair person's inside of the bathrooms at the library, gym, church and other area of this prison (G.S.P.) do not comply with (A.D.A.) standars [*sic*].

11.) This building (G.S.P.) Reidsville, GA., is not wheel chair accessible.

12.) The bathroom and buildings at this prison (G.S.P.) do not have accessible routes or (EXIT).

13.) The (G.S.P.) Reidsville, GA. Do not have accessible wheel chair ramps, doors, entrances, drinking fountains and/or water coolers, toilet stalls, shower stalls, toilet rooms, sinks, or alarms.

14.) The above named defendants and their agents have knowingly assigned plaintiff to a prison that would aggravate serious medical ailment, and force bodily harm upon him, and further injury to his serious medical ailments is unnecessary and wanton infliction of pain.

15.) I am suffering from multiple level spinal involvement with injuries to all levels of the spine secondary to a motor vehicle accident. I am also suffering from bilateral cervical pain in the nuchal [*sic*] and occipital regions with bilateral trapezius involvement, and symptoms have worsened over the past several months. Finally, the medical treatment given to me by Dr. Jacobs was so bad that it is the same as, or worse than, no treatment at all. From 6/18/96, to date, I have made request after request through (P.H.S.), (D.O.C.), (G.S.P.) and their members and/or agents concerning

physical therapy and/or surgery, and my requests has been repeatedly denied. (Please See Exhibit "D").

16.) I can not stand or walk and have been confined to a w/c for four (4) years or more, I am suffering from intense legs, arm, back, neck, chest, stomach, head and eyes, pains with cramps and weakness. I can not bend my neck downwords [*sic*] without intense neck and back pains, also, I do not have any control over my B/M, and it's very hard for me to discharge my urine. I have been diagnosed as having bulging disc at the C6-7 level. An anterior wedge fracture of T6 vertebral body, and an herniated disc at the L5-S1 level toward the left side.

17.) From 6/18/96 TO DATE, I have requested to the above named Defendants for cleaning supplies, laundry service and assistin [*sic*] in cleaning my cell, but the defendants and their agents has refused to do so. I am being forced to live in a cell where the walls and floors are smeared with human defecation, Despite my requests to (defendants) for cleaning supplies. I am required to live and sit in my own feces and other body waste. This was did in retaliation.

18.) Because of my disabilities I'm being denied of all "privileges and rights" which other similar security inmates have access to, such as: counseling services, educational servicess [*sic*], college program, vocational training, recreation activities, freedom of-movement in the unit and institution, television, phone calls, entertainment—and religious rights.

19.) I am being denied of needed corrective surgery, and other medical care & treatment which has caused my condition to worsened, this has taken the form of

punishment and I have been confined to solitary confinement cell.

20.) I think it is unconstitutional a Georgia statute which allowed the "*transfer* and *housing* of the plaintiff to a prison which is not "equipped" for handicapped patients (such myself). Because the loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement, such transfers require the protections of procedural due process, including notice and a hearing of which the prisoners is provided qualified and independent assistance, which plaintiff Goodman have been denied of. Also, Pursuant to the (A.D.A.) states prisoners with disabilities or handicaps are protected both by the Constitution and by federal statutes under the Constitution, prison officials must meet the medical needs of disabled prisoners and furnish the assistance that plaintiff Goodman, required in order to live a minimally decent life in prison, which the undersigns are also being denied of.

21.) I certify under penalty of perjury that the foregoing is true and correct. Executed on this 13th day of May, 1999.

G.S.P.

/s/ TONY GOODMAN
TONY GOODMAN

[EXHIBIT C]

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

DECLARATION [OF TRACY MILLER] IN SUPPORT OF PLAINTIFF'S MOTION FOR A T.R.O. AND/OR P.I.

(Filed: May 24, 1999)

1.) The Plaintiff is being kemped [*sic*] in a very small cell [K-1-cell #8] which is about 12-feet long and 3-feet wide) in which he can not ture [*sic*] his W/C, around inside of the small cell, Also, there's very little ventilation and a lot of humidity/heat inside of his cell, temp., —(F) inside of his cell are very high and there are very bad %'s of humidity inside of his cell. Plaintiff have been deliberately exposed to bitterly hot temperatures for a long time, his solitary confinement cell is extremely hot. The lack of adequate "a/c & ventilation" inside of his cell with the fact that he's rarely or never allowed out of his cell has caused a problem condition. Prison officials have simply allowed the prison cells to become an ice-box in the winter and a sauna in the summer.

2.) The shower is much too small for the Plaintiff to turn his w/c around inside, and there is insufficient ventilation inside of the shower, which undermines the health of the Plaintiff and the sanitation of the istitution [*sic*] itself.

3.) Pursuant to (G.D.O.C.'s) policy; onse [*sic*] an inmate serve (14) days in solitary confinement and

awaiting additional s/c, time, the inmate/Plaintiff should come off of s/c for one (1) day. However, (G.S.P.) have made their own policy, and Plaintiff Goodman are being required to serve 42 days in s/c. The Disciplinary Committee,: Gregg Steward, R.D. Callens, R. King, J. Sikes, O.T. Ray, J. Brady, A.G. Thomas, W. Garner, and Z. Miller have deprived Plaintiff of an interest or right which has been granted to him, pursuant to a rule, statute, or regulation promulgated by the state and such interest do require procedural due process.

4.) The classification procedures of the Penitentiary (G.S.P.) are inadequate. This results in overclassification of a substantial number of prisoners, such that there prisoners/Plaintiff are placed in maximum custody when lesser degrees of custody would suffice.

5.) The above named Defendants are discriminating against Black/Patients, and Black Patients are being denied of the Inf.,-cells, because of their race or given only the menial cells while Caucasian prisoners are assigned to the higher status and better living areas. Evidence showes [*sic*] that black patients are disproportionately overrepresented in punitive segregation units and that they are the overwhelming majority punished.

6.) The most startling fire safety deficien [*sic*] at (G.S.P.) is the prison's continual extensive use of pillows and mattresses made of polyurethane foam. That material has been known for years to emit deadly fumes when burned. Also, the cells in unit k-1, has no keylocks, The only way the cell doors can be open or closed is through an electric control box, there are no keylocks on any of the cell doors, if it was a fire are [*sic*] some other kind of emergency there would be no way

out without further injures [*sic*], because there's only one way to unlock the cell doors.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this 13th day of May, 1999.

/s/ TRACY MILLER
TRACY MILLER
EF #241919-264-71-4614

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

DECLARATION IN SUPPORT OF PLAINTIFF'S MOTION FOR A T.R.O. AND OR P.I. AS-OF-6/2/99— TO DATE—

(Filed: June 7, 1999)

1. Defendants and their agents are making death threats against Plaintiff's life.

2. Plaintiff suffers from hypertension and his hypertension inhibits his use of the yard and also of his cell (k-1 cell #8)

3. Plaintiff is being retalted [*sic*] against by defendants agents for engaging in constitutionally protected activity.

4. The Defendants are allowing the prison cells to become an ice box in the winter and a sauna in the summer, which caused Plaintiff to head pain & blackout.

5. Plaintiff is being made to go out to the yard without clothing or shoes which caused him very bad pains at head, eyes, chest with shortness of breath and blackouts. As-of-6/2/99 up until to date

6. Defendants and their agents are being deliberate indifference and/or reckless disregard to Plaintiff's safety and well being and also to his medical needs.

7. Plaintiff is repeatedly injured when he attempts to use the toilet and bathroom facilities, bed and shower because those facilities are not equipped for handicapped persons such as himself. As of 6/2/99, to date.

8. Plaintiff is being made to live in a very small cell [k-1 cell #8] (12-foot long and 3-feet wide) which he can not ture [*sic*] his w/c around in side of this cell.

9. The Temp inside of this cell are very high and there are also very high % of humidity inside of this cell which caused him pains and shortness of breath and blackouts. As of to date.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ TONY GOODMAN
TONY GOODMAN
6/8/99

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

[Filed: Aug. 16, 1999])

ANSWER OF DEFENDANTS STATE OF GEORGIA AND GEORGIA DEPARTMENT OF CORRECTIONS

Come now Defendants, State of Georgia and Georgia Department of Corrections, by and through their counsel, THURBERT E. BAKER, Attorney General, and show the following as their Defenses and Response to the Plaintiff's Complaint:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted. The Plaintiff contends he was subjected to unlawful conditions at Georgia State Prison where the Plaintiff has not been incarcerated since June 15, 1999. Consequently, the Plaintiff's claim for injunctive relief is rendered moot and the Defendants enjoy immunity from the Plaintiff's claims for monetary damages.

SECOND DEFENSE

The Complaint fails to state a claim within the subject matter jurisdiction of this Court. The Defendants show on information and belief that there has been insufficiency of service of process and the Court presently lacks jurisdiction over the Plaintiff's Complaint.

THIRD DEFENSE

The Defendants deny that the Plaintiff has been deprived of any rights, privileges, or immunities secured by the Constitution of the United States or the State of Georgia or under the Americans With Disabilities Act.

FOURTH DEFENSE

The Defendants deny that the Plaintiff has been deprived of any rights, privileges, or immunities secured under the American With Disabilities Act.

FIFTH DEFENSE

The Complaint fails to establish that these Defendants have breached any duties which they owed to the Plaintiff.

SIXTH DEFENSE

The named Defendants are cloaked with a qualified immunity from suit.

SEVENTH DEFENSE

Since this suit is a suit against the State of Georgia, the named Defendants assert the defense of sovereign immunity.

EIGHTH DEFENSE

The Defendants show that the application of the Americans with Disabilities Act is an unconstitutional exercise of Congressional authority over state prisons.

NINTH DEFENSE

The Plaintiff's claims against the Defendants are barred by the Eleventh Amendment of the United States Constitution.

TENTH DEFENSE

The Defendants show on information and belief that the Plaintiff has not exhausted administrative procedures which are prerequisite to bringing his claim under the ADA.

ELEVENTH DEFENSE

The Defendants respond to the specific allegations of the Plaintiff's Original Complaint as follows:

1. The Defendants lack information sufficient to form a belief as to the truth of the averments in paragraph one (1) of the Complaint, but are aware the Plaintiff has filed numerous other prison lawsuits during his several incarcerations.

2. The Defendants admit the allegations of paragraph two (II) that he was confined at Georgia State Prison at the time of filing this lawsuit and that GSP has a grievance procedure. The Defendants lack information sufficient to form a belief at that time as to whether the Plaintiff has exhausted his grievance remedies by filing a grievance against each of the named Defendants as to each of the claims set forth herein.

3. The Plaintiff's Complaint has no paragraph III.

4. The Defendants admit the Plaintiff has identified himself and those parties he desires to sue in paragraph IV. Process has been allowed to issue only as to the State of Georgia and the Georgia Department of Corrections.

5. *Statement of Claim*: The Plaintiff has attached a handwritten statement of claims which he identifies by page and paragraph numbers. These responses correspond to the Plaintiff's paragraph numbering system.

   1. The allegations of paragraph one (1) are denied. The Plaintiff is not entitled to the relief described.

   2-3. The allegations of paragraphs two and three are denied.

   4. It is denied the Plaintiff is entitled to the relief described in paragraph four (4).

   5. It is denied the Plaintiff has been the object of unlawful disparate treatment as described in this paragraph.

   6-7. The allegations of paragraphs six and seven are denied.

   8. The Plaintiff has stated his contended basis for his claim in paragraph eight.

   The Defendants show on information and belief that they have immunity under the Eleventh Amendment to his claims for monetary damages.

   9 & 11. The allegations of paragraphs nine (9) and eleven (11) are admitted.

10 & 12. The allegations of ten (10) and twelve (12) are denied.

13. So much of the allegations of paragraph thirteen (13) as show the Plaintiff is black are admitted. All other allegations of the paragraph are denied.

14. The persons named in paragraph fourteen (14) are not defendants and the allegations as to them are denied on information and belief.

15-16, 18-21. The allegations of paragraphs fifteen (15), sixteen (16), eighteen (18), nineteen (19), twenty (20), and twenty-one (21) are denied.

17. The Defendants lack information sufficient to form a belief as to the truth of the averments in paragraph seventeen (17). Therefore, they are denied.

22. The Defendants lack information as to the present diagnosis of the Plaintiff, but show on information and belief he is not a disabled person as contemplated by the ADA or otherwise. All other allegations of paragraph twenty-two (22) are denied.

23. The allegations of paragraph twenty-three (23) are denied.

24. The allegations of paragraph twenty-four (24) are denied. The Defendants show on information and belief that the Plaintiff is not disabled.

25. The allegations of paragraph twenty-five (25) are denied.

26. The allegations of paragraph twenty-six (26) are denied as drawn.

27. The Defendants admit that Georgia State Prison has a prison grievance procedure. Reference is made to the relevant Standard Operating Procedure (SOP) for a more accurate account of its contents and requirements.

28. On information and belief, the allegations of paragraph twenty-eight (28) are denied.

29. On information and belief the allegations of paragraph twenty-nine (29) are admitted.

30. The Defendants lack information and belief as to the truth of the averments in paragraph thirty (30), but show that Plaintiff is not faced with this issue.

31-32. The allegations of paragraph thirty-one (31) and thirty-two (32) are denied. There appear to be two paragraphs thirty-two, one of which carriers the page designation of "pg. 9-A". The Plaintiff lists some 47 grievances he indicates he has appealed. The Defendants currently lack information sufficient to form a belief as to whether these grievances were filed against these Defendants on the subject matter of this lawsuit or whether he has exhausted his grievances by awaiting a final disposition before filing this lawsuit.

33-35. The allegations of paragraphs thirty-three (33), thirty-four (34) and thirty-five (35) are denied.

36. On information and belief, the allegations of paragraph thirty-six (36) are denied.

37. On information and belief, the allegation of paragraph thirty-seven (37) are denied.

38. The allegations of paragraph thirty-eight (38), are denied. The inmate is not entitled to acoustical sound absorbing wall coverings.

39. The allegations of paragraph thirty-nine (38) are denied.

40. The Defendants lack information as to the events of 4/28/98. The remaining allegations of this paragraph are denied on information and belief.

41. The Defendants deny violation of fire safety codes or standards. The remaining allegations of paragraph forty-one (41) are denied.

42. The allegations of paragraph forty-two (42) are denied as drawn. Applicable fire safety precautions are taken in light of the security needs of the prison and its inmates. Access to an inmate steam table is not an issue under the ADA.

43. The Defendants lack information sufficient to form a belief as to the 7/20/98 events. The remaining allegations are denied.

44. The allegations of paragraph forty-four (44) are denied.

6. The Defendants deny each and every allegation of the Plaintiff's Complaint and Amended not heretofore specifically admitted.

WHEREFORE, the Defendants pray the Court:

a. that Judgment issue for the Defendants and that the Plaintiff's Complaint be dismissed with costs assessed against the Plaintiff:

b. that all relief requested in the Plaintiff's Complaint be denied.

c. that the Defendants have trial by jury as to all issues; and

d. that the Court afford such other and further relief as it deems necessary and proper.

This 16th day of August, 1999.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

JOHN C. JONES 401250
Senior Assistant Attorney General

/s/ STEPHEN E. CURRY
STEPHEN E. CURRY 202500
Special Assistant Attorney General

Augusta Riverfront Center
Suite 410, 1 Tenth Street
Augusta, Georgia 30901-1134
(706) 724-0022

[Service list omitted in printing]

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

No. CV699-0012

TONY GOODMAN AND, PLAINTIFF

v.

JOHNNY SIKES, A-G. THOMAS, J. WAYNE GARNER, AND ET AL., DEFENDANTS, THE STATE OF GEORGIA

(Filed: Oct. 21, 1999)

[PLAINTIFF'S] STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

COMES NOW Tony Goodman, Plaintiff named in the above-styled case, through and by themsefs [*sic*], file this statement of undisputed facts pursuant to the local Rule of this Court.

(1). On 6/18/96, Plaintiff was transffered [*sic*] form [*sic*] "Men's C.I." to (G.S.P.)—where he are being confined to administrative segregation 23 hr. pre. [*sic*] day, and are being denied the "full rang" [*sic*] of all privileges and rights that other similar security inmates have access to, which are being did in retaliation for the exercise of constitutional rights.

(2). The above named Plaintiff are being discriminated against because of their disabilities.

(3). Plaintiff's transfer was made to punish him for engaging in constitutionally protected activity.

(4). The State of Georgia (D.O.C., P.H.S, M.C.G., G.S.P., et al.,) are legal entity that may be sued by the Plaintiff.

(5). Plaintiff are being held by the (D.O.C., and G.S.P., et al.,) and are protected by the Eighth Amendment's proscription of cruel and unusual punishment, the Fourteenth Amendment, Due Process Clause, itself, and the laws of the states.

(6). The Americans with Disabilities Act does apply to prisons and does afford a right of relief to Plaintiff for Defendants violation of that Act.

(7). The Defendants have violated their owned (S.O.P.'s), (Policies), (contracts) and (A.C.A. standards).

(8). The Plaintiff have disabilities which confind [*sic*] them to wheel chairs.

(9). Plaintiff can and have demonstrated clearly established right and privileges that was and are being violated by the conduct of all Defendants.

(10). Defendants are dening [*sic*] Plaintiff of medical care and treatment and requiring the Plaintiff to live in a prison which is not properly equipped to secure and house handicapped patients.

(11). The Dr. wrote Plaintiff diagnosis and the directions concerning surgery and physical therapy on a standard prison hospital referral form, contrary to the Dr.'s direction,—we the Plain-

tiff have not been provided with surgery, and/or a course of physical therapy despite Plaintiff' repeated requests.

(12). On the following dates: (8/9/96, 8/20/96, 9/4/96, 9/7/96, and 9/13/96) Due to the fact that (G.S.P. Reidsville, Ga. HC01) is not properly equipped to secure and stabilize and also house handicapped patients including Plaintiff, Plaintiff was trying to transfer from their wheelchairs to the toilet and bed without the help of handicap bars and fell to the floor and was hurt.

(13). Plaintiff have been housed in a prison (G.S.P.) where the law library, church, gymnasium, and yard has no accessible toilet stalls, drinking fountain, sink, ramps or alarms, also the space allowance and reach ranges for w/c persons inside of the bathrooms and the gymnasium, law library, church and yard is not w/c accessible.

(a). On the following dates: 6/22/96, 8/9/96, 8/20/96, 9/13/96, 11/23/96, 11/25/96, 7/31/97, 12/24/97, 6/28/97,—due to the fact that (G.S.P. Reidsville, Ga. HC01) is not properly equipped to secure and stabilize and also house handicapped patients including Plaintiff Goodman, Plaintiff Goodman was trying to transfer from his w/c, to the toilet and bed without the help of handicap bars and fell to the floor and was hurt.

(b). Plaintiff Goodman have made requests after requests to Defendants and their agents to repair his personal w/c, in Plain-

tiff's requests he also relieved defendants of any and all responsibility associated with the repair or attempt to repair his w/c/ Defendants and their agents refused to repair the w/c.

(c). Plaintiff Goodman is being discriminated against because of his disabitiles [*sic*], and this type of transfer was made to punish the Plaintiff, by the Defendants, for engaging in constitutionally protected activity, Defendants has impended danger against Plaintiff's life this was did in retation [*sic*] for utilizing the 42 U.S.C. §1983 procedures.

(d). Defendants should have known that their actions and policies could violate the Eighth Amendment.

Considering all the evidence with all reasonable inferences favoring Plaintiff, reasonable persons could find that Defendants has responsibilities and authority relating to care and treatment of Goodman and that they acted with deliberate indifference to Goodman's serious medical needs. [Please see Exhibit "P"]

(14). The above-named Plaintiff are being denied of all "Privileges and Rights" which other similar security inmates have access too, such as: counseling services, educational services, college program, vocational training, recreation activities, freedom of movement in the unit and institution, television, phone calls, entertainment, and religious rights, also we are being denied of medical supervision and education,

concerning "DIABETES and HYPERTENSION."

(15). The space allowance and reach ranges for wheelchair persons inside of the bathrooms at the (G.S.P.) do not comply with (A.D.A. stander's [*sic*]), this building the (G.S.P.) is not wheelchair accessible, the bathrooms at the (G.S.P.) do not have accessibl [*sic*] routes, the (G.S.P.) do not have accessible wheelchair ramps, doors, entrances, drinking fountains and water coolers, toilet stalls, shower stalls, toilet rooms, sinks, or alarms.

(16). The above named defendants and their agents have knowingly assigned Plaintiff to a prison (G.S.P.) that would aggravate serious medical ailment, and force bodily harm upon him, and further injury to their serious medical ailments is unnecessary and wanton infliction of pain.

(17). From 6/18/96 to date, Plaintiff has made requests through the health services request form and also through letters to defendants Stuart Shapiro, Louise Cason, Jacobs, Padden, Michael Spradlin, Johnny Sikes, Jerell Powell, Derwin Cox, J. Wayne Garner and A. G. Thomas, concerning their medical needs and problems, but their request has been repeatedly denied and "no" treatment given.

(18). Defendants and their agents have and are refuse to allow Plaintiffs to see a doctor even when they know Plaintiff was seriously ill, The above named defendants denied and/or delayed treatment that was needed quickly for a painful health problem. Finally, the medical care given

to the plaintiffs by the Defendants was so bad that it is the same as, or worse than, no treatment at all.

(19). From 6/18/96 to date, the following name medical staff/(Defendants) Ann Mobley, P. A. Fraink, Louise Cason, Kersey, Jacobs, Williams Benjamin, Ray, Padden, Anderson, Delgatta, Kandrick, and Fountain, observed Plaintiff in pain and the draging [*sic*] of their legs, the holing [*sic*] of the stomach and chest and ignored repeated indications of worsening condition and refused to do anything for them, Plaintiff are at this time in need of medical care and treatment, but are being denied of it by the above named Defendants.

(20). The following named officers/(Defendants): Deloach, Griffin, J. Sikes, Bargeron, Boyette, Collins, Pairreash, Hardwick, T. Moye, Lonnie Heidey, Mulling, Anthony Byard, Wash, ORouke, Jackson, Powell, Ruffin, Hughs, J. Powell, D. Cox and J. Wayne Garner's activities but fail to take corrective measures amounted to deliberate indifference and/or negligent.

(21.) Plaintiff do acquire a protected liberty interest in remaining in the general population, to which due process protection is attached. Also Georgia regulations governing the administration of state prisons created such an interest.

(22). No state may "deprive any person of life, liberty, or property, without due process of law". Liberty interests protected by the Fourteenth

Amendment may arise from two sources—the due process clause itself and the laws of the states.

(23). Plaintiff Goodman have been deprived of that interest without a hearing, governed by the procedures mandated in Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).

(24). Plaintiff Goodman has a protected liberty interest in continuing to reside in the general prison population, at a medical prison.

(25). Prison officials (Defendants) actions in confining Plaintiff to administrative segregation violated Plaintiff's due process rights.

[EXHIBIT E]

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

(Filed: Oct. 21, 1999)

I, Tony Goodman, do declare under the penalty of perjury the information set forth herein below are true and corect [*sic*].

1.) I am the Plaintiff named in the above-styled case.

2.) I file this cause of action in good faith.

3.) I verily believe I am entitled to the redress herein.

4.) I do not enter and file this cause of action for any type of harassment and/or undue hardship and burdensome upon defendants.

5.) I state the named actions by defendants "set forth herein this cause of action did intelligently, understandingly, knowingly and voluntarily deprived and denied me certain rights, benefits, privileges and immunities secured and guaranteed to me by the United States Constitution and law thereof.

6.) I have been housed in a prison (G.S.P.) where the law library, church, gymnasium, and yard has no accessible toilet stalls, drinking fountain, sink, ramps or alarms, also the space allowance and reach ranges for

w/c persons inside of the bathrooms at the gymnasium, law library, church and yard is not w/c accessible.

7.) On the following dates: 6/22/96, 8/9/96, 8/20/96, 9/13/96, 11/23/96, 11/25/96, 7/31/97, 12/24/97, & 6/28/97, Due to the fact that (G.S.P.) Reidsville, GA. HCO-1) is not properly equipped to secure and stabilize and also house handicapped patients including Plaintiff Goodman, Plaintiff Goodman was trying to transfer from his w/c to the toilet and bed without the help of handicap bars and fell to the floor and was hurt.

8.) I have made requests after requests to Defendants and their agents to repair my personal w/c, in my requests I also relieved defendants of any and all responsibility associated with the repair or attempt to repair my w/c. Defendants and their agents refused to repair the w/c, which has caused Plaintiff to suffer physically, mentally and emotional pain.

9.) I am being discriminated against because of my disabilities, and this type of transfer was made to punish the Plaintiff, by the Defendants, for engaging in constitutionally protected activity. Defendants has impended danger against my life this was did in retation [*sic*] for utilizing the 42 U.S.C. § 1983 procedures.

* * * * *

12.) As a result of an automobile accident in 1992, Plaintiff is classified as a paraplegic and has been confined to a wheelchair due to a severe back injury.

13.) As a result of Defendants deliberate indifference and/or reckless disregard in operating the prison and Defendant's failure to properly house, secure and stabilize Plaintiff in a safe, manner, Plaintiff suffered multiple injuries including, but not limited to his head,

neck, back stomach, groin area, arm, legs, eyes, and has and continues to experience chronic headaches and significant trauma.

14.) As a proximate result of Defendant's acts, omissions, and deliberate indifference, Plaintiff has sustained, does sustain, and will continue to sustain personal injuries and mental and physical pain and suffering for which he entitled to be compensated.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of Mar., 1999.

/s/ TONY GOODMAN
TONY GOODMAN
EF #276619

WARDEN

ROM: DERWIN COX
(NAME)

JBJECT: Inmate Name: GOODMAN, TONY N

ne Above Named Inmate:(check one)
_____ (A) Is pending investigation relating to
Detention (PHD)
_____ (B) Is pending investigation of an incid
_____ (C) Is pending reassignment (PR)
_____ (D) Is admitted for alleged protective c
XXXXX (E) Other reason (specify): INF#8,
to GSP, per Mr. A.G. Thomas. Me

is this individual's decision based on all circumstance
opulation poses a serious threat to life, property, self,
"ution because (be specific): _____

his inmate's status will be reviewed daily by the Assist
eekends and holidays, the Administrative Duty Offica

ITIAL LOCK-UP APPROVED BY: _____
Signatu

ate: 6/18/96

:: Original to inmate file
Inmate concerned
OID (with incident report)
Asst. Warden/Security
Asst. Warden/Care & Treatment
Administrative Review Log Book

E: Unless authorized by the Warden or his designe
in Administrative Review.

All inmates in Administrative Review may retain
documented security reason why said property

VE REVIEW
ORDER

GSP PS 52

[EXHIBIT P-1]

DATE: 6/18/96

CRIEF COUNSELOR
(TITLE)

.: EF276619 Unit/Cellblock: IN6#8/ OTHER A&O

disciplinary report - Non Punitive Pre-Hearing

nt not related to a disciplinary report (PI)

tody reasons (PC)
THER A&O, inmate is in wheel chair, transferred
cial observation.

that this inmate's continued presence in the general
aff, other inmates, or to the security of the

nt Wardens of Security or Care and Treatment. On
will review daily.

e of Warden, Asst. Warden, Adm. Duty Officer

Unit Manager concerned
Duty Officer
Security Unit
J.H. Seckinger (Nathan copy) (2)
Administrative Assistant
Project Coordinator

, in writing, no inmate may stay longer than 3 days

heir personal property unless there exists a
hould not be retained.

EXHIBIT "P-1"

[EXHIBIT P-2]

Robert F. Proctor, M.D.
Staff Physician/ Internal Medicine
Georgia State Prison
HC01
Reidsville, GA 30453

DATE: 9/10/97

TO: Tony Goodman

RE: letter 9/5/97

Your concerns are well known and are being addressed by medication, and by consultation to experts in the relevent medical fields - Dr Maillous has already explained the consult plans in a recent reply to your letter to her - I'll remind you that PT is not available here; your security classification (which is not a medical responsibility) may make transfer unavailable - Consultation is our only option at present and this is going forward

R F Proctor MD

EXHIBIT F

[EXHIBIT P-3]

Carolyn A. Mailloux, M.D.
Medical Director
Georgia State Prison
HC01
Reidsville, GA 30453

Date: September 8, 1997

Name: Tony Goodman EF276619 Infirmary #8

Re: Letter

I have read your letters of 8-8-97 and 9-3-97, and have again reviewed your medical record. I found that in mid May 1996 there were two physician orders for you to receive physical therapy following an injury. The first was for ten days and the latter for seven days. I cannot find any order written for chronic therapy. However, in view of the persistant problems you have been experiencing with muscle spasms and headaches, I will write a consult to physical therapy at ASMP to see if they feel that chronic physical therapy would be of benefit to you. I have also requested that the neurosurgeon address the same question.

While in your letter you indicate that you feel that your medical needs are not addressed, review of your medical record reveals that you have been seen on sick call on average several times per week. Review also revealed that you have on a regular basis refused medication and treatment for your elevated blood pressure. It is difficult to provide treatment for your conditions when you refuse treatment. Please work with us, as I know you can, and together we can maximize your health and abilities.

Dr Mailloux

EXHIBIT [redacted] P-3

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

Civil Action File: CV699-0012

TONY GOODMAN, PLAINTIFF

v.

STATE OF GEORGIA AND GEORGIA DEPARTMENT
OF CORRECTIONS, DEFENDANTS

DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS

COMES NOW the Defendants, by and through counsel, Thurbert E. Baker, Attorney General for the State of Georgia, and show the following as their response to Plaintiff's Statement of Material Facts:

(1). Denied as written.

(2). Denied.

(3). Denied.

(4). Admitted.

(5). Admitted.

(6). Denied.

(7). Denied.

(8). Denied as written.

(9). Denied.

(10). Denied.

(11). Denied as written. Plaintiff has not provided sufficient information so as to enable the Defendants to determine when the event allegedly occurred.

(12). Denied as written.

(13). The factual statements contained in Paragraph numbered thirteen (13) and sub-parts (A), (B), (C) and (D) are denied as written.

(14). Denied.

(15). Denied as written.

(16). Denied.

(17). It is admitted that Plaintiff has submitted numerous written requests and complaints to department employees regarding his medical care. It is denied that Plaintiff has been denied adequate medical care.

(18). Denied.

(19). Denied.

(20). Denied.

(21). Denied.

(22). Plaintiff states a legal argument and no response is required. However, it is denied that Plaintiff has been denied or deprived of any rights as guaranteed by State of Federal law.

(23). Plaintiff states a legal argument and no response is required. However, it is denied that Plaintiff has been denied or deprived of any rights as guaranteed by State or Federal law.

(24). Denied.

(25). Denied.

This 18th day of Nov., 1999.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

JOHN C. JONES 401250
Senior Assistant Attorney General

/s/ STEPHEN E. CURRY
STEPHEN E. CURRY 202500
Special Assistant Attorney General

Augusta Riverfront Center
Suite 410, 1 Tenth Street
Augusta, Georgia 30901-1134
(706) 724-0022

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

DEFENDANTS' STATEMENT OF MATERIAL FACTS

(Filed: Nov. 18, 1999)

COME NOW the Defendants, by and through counsel, Thurbert E. Baker, Attorney General for the State of Georgia, and submit the following Statement of Material Facts to which no Genuine Issue Exists in support of their Motion for Summary Judgment in the above-styled case, as follows:

1. The Plaintiff, Tony Goodman, a felony inmate, is currently incarcerated at Macon State Medical Prison. At all times relevant to this lawsuit, he was assigned to Georgia State Prison in Reidsville, Georgia. The injunctive relief sought in the Plaintiff's Complaint was from conditions at GSP.

2. At all times relevant to this lawsuit, Plaintiff was in the care and custody of the Georgia Department of Corrections.

3. Plaintiff alleges that his assignment at Georgia State Prison was in violation of the Americans With Disabilities Act. He has since been reassigned, as he requested, to another prison.

4. Plaintiff was assigned to Georgia State Prison in the Special Management Unit both because of his continuous disruptive conduct and the special requirements associated with his being wheel chair bound.

5. Plaintiff is not a person subject to the Americans Disabilities Act.

6. As a matter of law, the Americans Disabilities Act does not apply to State correctional facilities.

7. Plaintiff has not experienced a serious injury as contemplated by the Prison Litigation Reform Act.

8. The Plaintiff was subjected to no limitation or condition at Georgia State Prison in violation of the Americans With Disabilities Act.

This 15th day of Nov. 1999.

Respectfully submitted,

THURBERT E. BAKER 033887
Attorney General

KATHLEEN M. PACIOUS 558555
Deputy Attorney General

JOHN C. JONES 401250
Senior Assistant Attorney General

/s/ STEPHEN E. CURRY
STEPHEN E. CURRY 202500
Special Assistant Attorney General

Augusta Riverfront Center
Suite 410, 1 Tenth Street
Augusta, Georgia 30901-1134
(706) 724-0022

[EXHIBIT P-1]

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

AFFIDAVIT OF PLAINTIFF TONY GOODMAN

(Filed: Dec. 2, 1999)

1.) Evidence in Plaintiff's action under American with Disabilities Act (ADA) established that any disability discrimination by defendants in excluding Plaintiff Goodman from certain prison programs and denying him benefits of certain services was intentional; Plaintiff had requested several times that he have access to programs and services, and defendants were aware they were not providing Plaintiff full or any access, knew that Plaintiff's disability was reason he was not receiving full access and that he repeatedly requested access, Defendants knew it had legal duty to provide Plaintiff Goodman with reasonable access. See *Love v. McBride*, N.D. Ind. 1995, 896 F. Supp. 808, affirmed 103 F.3d 558.

2.) Plaintiff whom are disabled, claim that defendants did not provide him with readily accessible bathroom and shower facilities. See applicable (ADA) regulations. Also, see *Sounders v. Horo*, E.D. Pa. 1996, 959 F. Supp. 689.

3.) Plaintiff Goodman is being denied use of state prison library, dining hall, education programs, gym, and church by Defendants, which are "activities," "programs and services," under ADA section conferring

rights on qualified disabled individuals/Plaintiffs who are denied access to services, programs, or activities of Public entity. See *Crawford v. Indiana* Dept. of Corrections, C.A. 7 (Ind.) 1997, 115 F.3d 481.

* * * * *

10.) The above named Defendants have discriminated against the Plaintiff because of his disabilities when they transffered [*sic*] him away from the medical prison and refused and/or denied and/or excluded him from participation in MH/MR services, P.T. services, etc. services, programs, and activities of the prisons.

* * * * *

14.) Plaintiff have made requests after requests to defendants for a copy of his prison medical records but, his requests were denied because he is indigent and do not have the funds to cover the cost for the copies. Plaintiffs is being deprived and denied access to the courts.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of Nov., 1999.

/s/ TONY GOODMAN
TONY GOODMAN
EF #276619

[EXHIBIT P-9]

GEORGIA DEPARTMENT OF CORRECTIONS

MEDICAL CLINIC
(MD, PA, NP)

Name Goodman Irving
No. EF274419
Date of Birth 11/2/64
Race B Sex M

DATE/TIME: 6/2/98 INSTITUTION: GSP

SUBJECTIVE: PATIENT STATES: Transferred in paraplegia
OTHER SIGNIFICANT HEALTH CONDITIONS: States injured in auto accident 1992 - Lost Vision in Rt eye - Rt Retinal detachment - MRI of Brain Bulging disc C6-7 - Bulge D5-6 Compression fracture T1 - Bulge L4-5 Spinal -
OBJECTIVE: VITAL SIGNS: BP: 140/90 PR: 72 RR: 20 Temp: 98.6 Weight: 190
GENERAL: Alert NAD Hypertension Color Pale - Joint Limit Flexor Resp in - Int atrophy
CHEST: HEART: LUNGS:
OTHER SIGNIFICANT PHYSICAL FINDINGS: Visual R&R intact - No sensation Oriented - alert - spasm in all Rt wrists left

ASSESSMENT: DIAGNOSES: Para plegia - Hypertension - Foley Cath -

PLAN, ORDERS: REQUEST NEW DIAGNOSTIC TESTS:
REQUEST NEW CONSULTS:
ALL PREVIOUS MEDICATIONS SAME AS ON: as ordered EXCEPT: NEW MEDICATIONS:

REFERRED TO CHRONIC ILLNESS CLINIC: YES: (✓ NO: ( )
RETURN TO THIS CLINIC: YES: ( ) NO: (✓ IN: WEEKS: MONTHS:
EDUCATION: DISCUSSED WITH PATIENT FOLLOW-UP CARE: YES: ✓ NO:
DISCUSSED WITH PATIENT THE FOLLOWING ABNORMAL LAB:
DISCUSSED WITH PATIENT ALTERNATIVE THERAPIES SUCH AS: NA
DISCUSSED WITH PATIENT MEDICATION SIDE EFFECTS SUCH AS:
I CERTIFY I HAVE REVIEWED THE MEDICAL PROFILE.

SIGNED: [signature] P-9

PI-3005A (REV. 3/95) DO NOT WRITE ON BACK - ADDITIONAL SPACE: USE PI-3000 - BLACK INK ONLY MEDICAL CLINIC

[EXHIBIT P-12]

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

DECLARATION IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, WHICH HE HAS NOT RECEIVED

(Filed: Dec. 2, 1999)

1.) I am the plaintiff in this case. I make this declaration in support of *my opposition to defendant's Motion for SUMMARY JUDGMENT.*

1A.) *I have not received a copy of Defendants Motion for Summary Judgment.*

2.) Pursuant to, the Eight and fourteen Amendments, and the safety and well being of the plaintiff, From 7/1/96, up until 11/19/99, the above named defendants and their agents has deliberate and intentionally denied and interfered with treatment and medication which has been prescribed by outside and inside doctors. The above named defendants have denied and refused to give the plaintiff his prescribed treatment and medication which caused him infliction of unnecessary pain and suffering. And with the fact, that this jail is not handicap excessble [*sic*], with regard to conditions of confinement in prisons the conditions must not inflict unrestricted and unnessary [*sic*] pain.

3.) The above named defendants and their agents must/but has refused to meet the medical needs of

disabled plaintiff and furnish the assistance that he require in order to live a minimally decent life in prison/jail. The defendants must/but have refused to take the plaintiff as they find him and provide facilities compatible with his physical condition that meet civilized standards of decency.

4.) The above named defendants and their agents have confined Plaintiff to a jail with which conditions has inflicted unrestricted and unnecessary pain, in which punitive conditions has greatly exceed the seriousness of the crime which brought on the imprisonment.

5.) The above named defendants and their agents have knowingly assigned Plaintiff to a cell that would aggravate serious medical ailment, and force bodily harm upon him, and further injury to his serious medical ailments is unnecessary and wanton infliction of pain.

6.) Plaintiff is being housed at a prison (of the D.O.C.) this jail is extensive overcrowded, and it affects environmental health and safety, food services, medical and mental health care, and programming.

* * * * *

8.) The space allowance and reach ranges for wheelchair persons inside of the bathrooms at the (prison) do not comply with (A.D.A. standers [*sic*]).

9.) The (prison) is not wheel chair accessible.

10.) The bathrooms at the (prison) do not have accessible routes.

11.) The (prison) do not have accessible wheel chair ramps, doors, entrances, drinking fountains and water

coolers, toilet stalls, shower stalls, toilet rooms, sinks or alarms.

12.) *The above named defendants and their agents has deliberate and intentiontionally [sic] denied and interfered with treatment and medication and also appointments which has been prescribed by outside and inside doctors.*

13.) *The above named defendants and their agents has observed plaintiff in pain and the holing [sic] of his neck and chest, and ignored repeated indications of worsening condition.*

14.) *Plaintiff has been forced to sleep in his wheel chair from 7/1/96, to 7/3/96 again from 3/23/98 to 5/29/98 which has caused his condition to worsen.*

15.) Plaintiff made request after request to the above named defendants and their agents for assistance transferring from his wheel chair to the toilet, shower, and bed but his requests was repeatedly denied.

16.) On 10/5/98, Plaintiff had B/M in his wheel chair and on the floor inside of the cell and was required to sit in his own waste, and denied of clean catheter, cleaning supplies, laundry service, and assistance *from 10/5/98 to 10/19/98.*

17.) The D.O.C. jails is an unmitigated disgrace.

18.) On 7/1/98, at approx. 5:00 am Plaintiff was trying to tranffer [*sic*] from his wheel chair to the toilet without any help or handicap bars and [fail] [*sic*] to the floor and was hurt at neck at right leg, and at the heard. [*sic*]

* * * * *

For the foregoing reasons, the Court should Grant Plaintiff's motion in all respects. Pursuant to 28 U.S.C. 1746 I declare under penalty of perjury that the foregoing is true and correct.

/s/ TONY GOODMAN
TONY GOODMAN
276619

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

AFFIDAVIT OF TONY GOODMAN

(Filed: Feb. 25, 2000)

I can not participate in work assignments, recreational activities, entertainment, library, vocational training, dining hall, mental health services, congregate religious services, and occasional movements to areas other than a very confined area. These services and activities are available to inmates who do not have disabilities. Also, the cells in unit (k-1) are so narrow, I can not turn my wheel chair around inside of the cells.

I am being subjected to improper institutional segregation which is unlawful discrimination, Georgia has violated the law by not providing me with community alternatives, which is causing me to sink deeper into depression in the prison segregation unit, sitting idly in lonely cell in the locked ward. However, inmates with disabilities cannot participate in activities as inmates without disabilities because of the inaccessibility of the prisons, then Title II of the Americans With Disabilities Act is being violated.

Finally, windows are so high that inmates who use wheel chairs cannot look out of them, while I am uncertain what, if any, accommodation can assist an inmate to see the outside (or, if looking out a window is part of the adequate light required by standard operating procedure Reference No. II B09-0001 Section VI.E.1), this lack emphasizes the need to have an opportunity for

inmates who use wheel chairs to attend exercise sessions.

The medical administrator, Ms. L. Johnson/Waters, has a racial disparity concerning black/white inmates. She fills, [*sic*] that the INF cells are for white handicapped inmates, and the black handicapped inmates are to be housed in (k-1). Also, her action shows racial discrimination.

* * * * *

I am a general population close security inmate, who has disabilities and handicapped since 1992, and has suffered periods of depression. From 6/18/96, To: [*sic*] to date, I have been transferred to and from almost every prison here in the State of Ga., and segregated each time. This is a very shocking situation because, I (Goodman) who use a wheel chair, are kept in my cell 24 hours each day because of the inaccessibility of the prison.

I declare under penalty of perjury that the foregoing statement made in this affidavit are true and correct.

Executed on 2/19/2000

/s/ TONY GOODMAN
TONY GOODMAN
G.S.P.

[EXHIBIT L-4]

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

[Caption omitted in printing]

PLAINTIFF'S DECLARATION IN SUPPORT OF HIS OPPOSITION TO DEFENDANT'S OUT-OF-TIME MOTION FOR SUMMARY JUDGMENT

(Filed: Nov. 1, 2001)

Tony Goodman, declares under penalty of perjury:

1. I am plaintiff in this case. The complaint alleges and show a pattern of discrimination by the States which violates the fourteenth Amendment. Plaintiff also, asserts these claims under the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. Because Goodman has no assets. I submit this declaration in support of my opposition to Defendant's out-of-time Motion for Summary judgment.

2. Plaintiff states that the State of Georgia, et al., violated the ADA by not providing him with reasonable accommodations regarding his disability and confinement to a wheelchair, Plaintiff states that he has been confined to a wheel chair since—1992 because of a back injury suffered in a accident. Plaintiff states that he was transferred to G.S.P. and while incarcerated there, Defendants failed to provide him with integrated services. Plaintiff asserts that he was confined to administrative segregation at G.S.P. and was denied accessibility to programs and services offered to similarly situated inmates.

3. Plaintiff states that the cell he was confined to lacked facilities for the disabled "for hygiene, drinking, and performing body excretion functions." Also, Plaintiff points out a lack of wheel chair accessibility to the prison law library, church, and gymnasium.

4. Plaintiff states that bathrooms, shower stalls, sinks, and entrances to building at GSP are not wheelchair accessible. As a result, plaintiff allegedly lacked access to services and activities offered by G.S.P. including counseling, education, vocational training, and recreation.

5. Additionally, Plaintiff that he requested, but did not receive, assistance from correctional officers in moving from his wheelchair to the toilet, shower, and bed. Plaintiff states that this lack of assistance caused him to have to sit in his own waste, to sleep in his wheelchair for long periods of time and to injure himself. In particular, plaintiff states that he was injured when "hurling" himself from the toilet to his wheelchair on August 26, 1998.

6. On 8/26/98, Mr. Smith was the unit (O.I.C.) k-unit, Mr. Harden was the unit officer (k-unit), Mr. S. Durden was the (E.R.) nurse.

7. On 8/26/98, when hurling myself from the toilet to my wheelchair fell to the floor was injured at knee, toe and spine,—officers Harden and Smith pick me up off the floor put me in my w/c, then officers Smith and Durden transported me by w/c, the prison (E.R.) where I was seen and exam, by Ms. Jackson, once I was seen and exam, Mr. S. Durden transported me back to my cell (k-1-8)–Please see *Exhibit "A"* attached hereto)

8. On 8/27/8, I was seen and exam by the (P.A.) an x-rays was taken of my right toe and right knee. Please see *Exhibit—"B, C and D"* attached hereto.

9. April 8, 1999. I fell when try to transfer from my w/c, to seat in the shower stall that was not designed for handicapped individuals, I was injured from the fall and was seen by a nurse Ms. S. Moke (AK) at that time I requested to be seen by a Dr. Ms. S. Moke refused to allow me to be seen by a Dr., at that time the officers put me back into my cell and lock the door.

9. On 6/15/99, transferred from *GSP* to Lee Arrendale State Prison where I was see and exam by D. J. Phillippe. Dr. Phillippe prescribed physical therapy, hoyerlift, trapeze bar flood mattress, wheel chair parts, lotions, soaps, and emoluments and hospital bed—which G.S.P. refused to do.

10. On 10/26/99, transfered [*sic*] from Lee Arrendale State Prison where I was see and exam. by Dr. Bassey. Dr. Bassey, also, prescribed physical therapy, hoyerlift, trapeze bar mattress, w/c parts, lotions, soaps, and emoluments and hospital bed. There also was an x-ray did of my t-spine, Dr. Bassey stated that the old fracture had been refractured—The Defendant at G.S.P. knew I needed the above named medical devices but refused to prescribe it.

11. For the reasons stated in the Declaration submitted herein, these undisputed facts establish that defendants violated the fourteenth Amendment and the ADA 42 U.S.C. §. Accordingly, the foregoing factual allegations create a genuine issue of material fact and will, If proved at trial, entitle me to judgment, as explained in the brief and in the declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

10/29/01

/s/ TONY GOODMAN
TONY GOODMAN